City of Lafayette Staff Report

For:	City Council
By:	Michael P. Cass, Assistant Planner Malathy Subramanian, City Attorney
Date Written:	July 17, 2009
Meeting Date:	July 27, 2009
Subject:	ZT02-09: Interim Urgency Ordinance, Establishing a Temporary Moratorium on the Establishment and Operation of Medical Marijuana Dispensaries.

BACKGROUND

California voters approved by voter initiative "The Compassionate Use Act of 1996," also known as Proposition 215, and codified at Health and Safety Code section 11362.5 et seq. Proposition 215 was intended to allow people to obtain and use medical marijuana under certain specified circumstances. Senate Bill 420, which took effect on January 1, 2004, established the Medical Marijuana Program that recognizes a right to collective and cooperative cultivation of medical marijuana.

The U.S. Supreme Court has confirmed that the Controlled Substances Act, which provides that possession and use of marijuana is a crime, is constitutional and that because federal law preempts any conflicting state law, the Act may be enforced by federal authorities against persons possessing or using marijuana, regardless of the protections offered by the Compassionate Use Act and Medical Marijuana Program. Despite this, the United States Attorney General has recently indicated that he would no longer raid medical marijuana dispensaries.

The Lafayette Municipal Code does not specifically address the regulation or location of medical marijuana dispensaries. The City has taken the position of prohibiting medical marijuana dispensaries due to the violation of federal law. Although this approach does not arguably enforce federal law, but relies on the City's police powers, more recently California courts have concluded that local governments may not enforce federal law, specifically when dealing with medical marijuana. Based upon recent case law and the U.S. Attorney General's new policy, we recommend that the City Council adopt a moratorium on medical marijuana dispensaries to allow the City to study this use along with other uses as part of the zoning update that will follow the Downtown Specific Plan process.

Government Code section 65856 allows a city to adopt a zoning ordinance that prohibits any uses that conflict with a contemplated zoning proposal that the City Council, Planning Commission, or planning department is considering or studying or intends to study within a reasonable time to protect the public safety, health, and welfare. The urgency ordinance requires a four–fifths vote of the City Council for adoption and shall be effective for no more than 45 days. The City Council may further extend the urgency ordinance for 10 months and 15 days after a noticed public hearing, and may subsequently extend the ordinance for one additional year. Ten days prior to the expiration of the ordinance, the City Council shall issue a written report describing the measures taken to alleviate the conditions which led to the adoption of the ordinance.

9B

STAFF ANALYSIS & COMMENTS

City of Orinda

On July 7, 2009, the Orinda City Council adopted Urgency Ordinance No. 09-04, imposing a 45-day moratorium on the establishment and operations of medical marijuana dispensaries. Planning Services Division staff attached the City of Orinda Staff Report, which includes very detailed background information and analysis of the current situation.

Planning Services Division Work Plan

The Amended 2009 Planning Services Division Work Plan includes a number of tasks to implement the Downtown Strategy and Specific Plan, such as initiating a study on uses (activity classifications) and downtown land use districts (Task #5). Staff believes that a medical marijuana dispensary will likely conflict with the contemplated aforementioned zoning proposal that the City is considering and intends to continue studying it within the immediate future. Establishing a temporary moratorium on the establishment and operation of medical marijuana dispensaries will enable the City to protect the public safety, health, and welfare.

Applicable Sections of the Lafayette Municipal Code

The Lafayette Municipal Code ("LMC") does not specifically address the regulation or location of medical marijuana dispensaries. However, the City's definition of general retail sales activity is broad. General Retail Sales Activity means the retail sale from the premises of the shopper goods which are generally of a nature that are easily carried or transported from place to place by a pedestrian, and does not normally necessitate the use of motor vehicles for portage of goods or the provision of parking in close proximity to the place of business (§6-427 LMC). The definition of general retail sales activity is one anticipated component to be addressed as part of the study on uses and land use districts.

RECOMMENDATION

Adopt Interim Urgency Ordinance 587, establishing a temporary moratorium on the establishment and operation of medical marijuana dispensaries.

ATTACHMENTS

A. Draft Interim Urgency Ordinance No. 587
B. City of Orinda Staff Report and Attachments, dated July 7, 2009
   1. Attachment A Interim Urgency Ordinance No. 09-04
   2. Attachment B Government Code Section 65858
   3. Attachment C Memorandum by City of Concord Police Chief
   4. Attachment D Compilation of City/County Medical Marijuana Ordinances for Alameda and Contra Costa Counties

DRAFT

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE
IN THE MATTER OF:

An Interim Urgency Ordinance of the City Council of the City of Lafayette, California Making Findings and Establishing a Temporary Moratorium on the Establishment and Operation of Medical Marijuana Dispensaries	)	Ordinance No.587

The City Council of the City of Lafayette does ordain as follows:

Section 1. Findings. The City Council finds the following:

1. In 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5, et seq. and entitled the Compassionate Use Act of 1996 ("the Act").
2. The intent of Proposition 215 was to enable persons who are in need of medical marijuana for medical purposes to obtain it and use it under limited, specified circumstances.
3. On January 1, 2004, SB 420 went into effect. SB 420 was enacted by the Legislature to clarify the scope of the Act and to allow cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the Act.
4. The Lafayette Municipal Code currently does not specifically address or regulate medical marijuana dispensaries.
5. California cities that have permitted the establishment of medical marijuana dispensaries have found that such dispensaries have resulted in negative and harmful secondary effects, such as an increase in crime, including robberies, burglaries, and sales of illegal drugs in the areas immediately surrounding medical marijuana dispensaries, odor, loitering around the dispensaries, and increase in driving while under the influence of marijuana.
6. To address both community and statewide concerns regarding the establishment of medical marijuana dispensaries, it is necessary for the City of Lafayette to study the potential impacts such facilities may have on the public health, safety, and welfare.
7. Based on the foregoing, the City Council finds that issuing permits, business licenses, or other applicable entitlements providing for the establishment and/or operation of medical marijuana dispensaries, prior to completion of the City's contemplated study of the potential impact of such facilities poses a current and immediate threat to the public health, safety, and welfare, and that a temporary moratorium on the issuance of such permits, licenses, and entitlements is thus necessary.

Section 2. Imposition of Moratorium.

1. In accordance with the authority granted the City of Lafayette under Government Code Section 65858, from and after the date of this Ordinance, no use permit, variance, building permit, business license or other applicable entitlement for use shall be approved or issued for the establishment or operation of a medical marijuana dispensary for a period of forty-five (45) days.
2. For purposes of this Ordinance, "medical marijuana dispensary" shall mean any facility or location where a primary caregiver makes available, sell, transmit, give, or otherwise provide medical marijuana to one or more of the following: a qualified patient, a person with an identification card, or a primary caregiver. For purposes of this Ordinance, the terms "primary caregiver," "qualified

patient," and "person with an identification card" shall have the same meaning as that set forth in Health and Safety Code Section 11362.5, et seq.

3. For purposes of this Ordinance, a medical marijuana dispensary shall not include the following uses, as long as the location of such uses is otherwise regulated by applicable law and as long as such use complies strictly with applicable law, including, but not limited to, Health and Safety Code Section 11362.5, et seq.: (1) a clinic, licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; (2) a health care facility, licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; (3) a residential care facility for persons with chronic life-threatening illness, licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; (4) a residential care facility for the elderly, licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; or (5) a residential hospice or home health agency, licensed pursuant to Chapter 8 of the Health and Safety Code.

Section 3. CEQA. The City Council hereby finds and determines, that this Ordinance is not subject to the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15060(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) because it has no potential for resulting in physical change to the environment.

Section 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not effect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

Section 5. Effective Date. This Ordinance shall become effective immediately upon adoption if adopted by at least a four-fifths vote of the City Council and shall be in effect for 45 days from the date of adoption unless extended by the City Council as provided for in the Government Code.

Section 6. Publication. The City Clerk shall either (a) have this Ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

The foregoing Ordinance was passed and adopted at a meeting of the Lafayette City Council held on July 27, 2009 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

_____
Don Tatzin, Mayor

_____
Joanne Robbins, City Clerk

City Council
Staff Report

Agenda Item: I-3
Date: July 7, 2009
Department: Planning

AGENDA TITLE: Ordinance No. 09-04 imposing a moratorium on the establishment and operation of Medical Marijuana Dispensaries (MMD).

STAFF RECOMMENDATION: Adopt Urgency Ordinance No. 09-04 imposing a 45-day moratorium on the establishment and operation of MMD's.

BACKGROUND:
Proposition 215 ("Compassionate Use Act of 1996") legalizing medical use of marijuana under limited and specified circumstances was approved by voters of the State of California in 1996. In 2003, the Legislature enacted SB 420 to clarify the scope of Proposition 215, and to allow cities to adopt and enforce rules and regulations consistent with SB 420. In Contra Costa and Alameda Counties, 20 agencies (both counties and nine cities in each county) have adopted local ordinances regulating medical marijuana dispensaries, as summarized in Table One on the following page. Orinda's municipal code contains no provisions to allow medical marijuana dispensaries and Chapter 17.8 contains a prohibition on all uses in the Downtown Commercial district not specifically allowed.

Although possession, use, manufacture and distribution of marijuana are illegal under Federal laws, the U.S. Attorney General announced in February 2009 that raids of medical marijuana dispensaries would cease. In light of the U.S. Attorney General's new enforcement policy pertaining to medical marijuana dispensaries, the potential for adverse impacts on public safety health and welfare as experienced by other California cities and the ongoing downtown planning efforts the City initiated in 2007 with the Planning Process Review Task Force (PPRTF), staff recommends the City Council adopt Urgency Ordinance 09-04 (Attachment A) establishing a moratorium on medical marijuana dispensaries so the use may be studied and appropriate regulations may be drafted and adopted.

Government Code §65858 states in part that a city *"...may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan or zoning proposal that the legislative body, planning commission or planning department is considering..."* MMD's may conflict with the comprehensive recommendations in the process of being developed by the PPRTF for the City's General Plan and zoning revisions, which may include regulation of MMD's. Urgency ordinances require a 4/5 vote of the City Council, take effect immediately after adoption and are valid for 45 days unless extended. (See Attachment B)

DISCUSSION:
Staff reviewed other California cities' experiences with medical marijuana dispensaries and determined that it would be appropriate for the City of Orinda to consider adopting local

regulations that specifically address impacts on public safety, health and welfare associated with the operations of medical marijuana dispensaries.

Negative impacts on public safety, health and welfare experienced by several cities that have MMD's include:

- Illegal drug sales by street dealers near MMD's targeted to MMD customers,
- Increased incidents of DUI by MMD customers leaving MMD's ,
- Robberies of clients leaving MMD's,
- Burglaries of MMD's,
- Illegal sales of marijuana at MMD's,
- Public smoking of marijuana in prohibited areas,
- Loss of neighboring businesses,
- Complaints of criminal activity and
- Adverse impacts on neighboring businesses including odors, loitering and the impacts listed above.

Greater detail regarding community effects are contained in the attached memorandum prepared by the Concord Chief of Police. Additional information is also available in staff reports, studies, memoranda and other documents compiled by the California Chiefs of Police Association and posted on their website at www.californiapolicechiefs.org

As noted above, staff reviewed the codes of Contra Costa and Alameda counties and the municipal codes of the cities in both counties and found that MMD's are allowed in two jurisdictions in Contra Costa County (Martinez and Pinole) and in four jurisdictions in Alameda County (Albany, Berkeley, Oakland and Alameda County). A significant number of cities in both counties do not have MMD ordinances. (See Table One)

Table One
Status of Medical Marijuana Ordinances in Contra Costa and Alameda Counties

Jurisdictions with MMD Ordinances	**Jurisdictions without MMD Ordinances**	**Code Standards**		
		Prohibited	Allowed with Use Permit	Allowed by Right
Contra Costa County				
	Antioch			
Brentwood		X		
	Clayton			
Concord		X		
	Danville			
El Cerrito		X		
Hercules		X		
	Lafayette			
Martinez			X	
	Moraga			
Oakley		X		
	Orinda			
Pinole				X
	Pittsburg			
Pleasant Hill		X		

	Richmond			
San Pablo		X		
	San Ramon			
	Walnut Creek			
Contra Costa County		X		
10	**10**	**8**	**1**	**1**
Alameda County				
Albany			X	
Berkeley			X	
Dublin		X		
Emeryville		X		
Fremont		X		
	Hayward			
Livermore		X		
	Newark			
Oakland			X	
	Piedmont			
Pleasanton		X		
San Leandro		X*		
	Union City			
Alameda County			X	
10	**4**	**6**	**4**	**0**

* Moratorium in effect

A moratorium will provide the City with the time necessary to fully investigate and draft regulations of MMD's that will protect the general public, homes and businesses adjacent and near such businesses, and the patients or clients of such establishments.

FISCAL IMPACT: None

ATTACHMENTS:

Attachment A: Interim Urgency Ordinance No. 09-04
Attachment B: Government Code Section 65858
Attachment C: Memorandum by City of Concord Police Chief
Attachment D: Medical marijuana ordinances for Alameda and Contra Costa County and cities in both counties

Respectfully submitted by,

Emmanuel Ursu
Director of Planning

Approved By: _____

City Manager

BEFORE THE CITY COUNCIL OF THE CITY OF ORINDA

In the Matter of:

Uncodified Urgency Interim Ordinance)
Imposing a Temporary Moratorium on the)
Establishment of Medical Marijuana)
Dispensaries in the City of Orinda for a)
Period of 45 Days Pending a Study of)
Zoning Regulations that are needed to) Ordinance No. 09-04
Alleviate a Current and Actual Threat to)
the Public Health, Safety and Welfare)

THE CITY COUNCIL OF THE CITY OF ORINDA FINDS AND DECLARES AS FOLLOWS:

WHEREAS, in 1996 the voters of the State of California approved Proposition 215 which was codified as Health and Safety Code Section 11362.5, et seq. and entitled "The Compassionate Use Act of 1996" ("the Act"); and

WHEREAS, the intent of the Act was to enable seriously ill persons to obtain, use and cultivate marijuana for medical use under limited, specified circumstances; and

WHEREAS, on January 1, 2004, Senate Bill 420 became effective to clarify the scope of the Act and to allow cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the Act; and

WHEREAS, as a result of Proposition 215, individuals have established medical marijuana dispensaries in various cities in California, and

WHEREAS, while the experiences in the regulation and policing of medical marijuana dispensaries have varied from city to city, several California cities have reported an increase in crime, such as burglary, robbery, odor, loitering around the dispensaries, an increase in vehicular traffic and noise in the vicinity of dispensaries, and the sale of illegal drugs, including the illegal resale of marijuana from dispensaries, in the areas immediately surrounding such medical marijuana dispensaries, and

WHEREAS, twenty jurisdictions in Alameda and Contra Costa Counties have adopted rules and regulations specifically applicable to the establishment and operation of medical marijuana dispensaries, and

WHEREAS, six jurisdictions in Alameda and Contra Costa Counties all located within 16 miles of the City of Orinda permit the establishment and operation of medical marijuana dispensaries and therefore, reasonable access to medical marijuana dispensaries for persons with a legal necessity for medical marijuana is available, and

WHEREAS, The City of Orinda has not adopted rules and regulations specifically applicable to the establishment and operation of medical marijuana dispensaries and the lack of such controls may lead to an establishment of dispensaries and the inability for the City to regulate these establishments in a manner that will protect the general public, homes and businesses adjacent and near such businesses, and the patients or clients of such establishments, and

WHEREAS, based on the lack of any consistent experience of cities statewide and in the absence of any regulatory program in the City, regarding the review of the establishment and operation of medical dispensaries; the City should consider whether negative effects on the public health, safety, and welfare may occur in the City of Orinda as a result of the operation of medical marijuana dispensaries and the lack of appropriate regulations governing the establishment and operation of such facilities, and

WHEREAS, on June 6, 2005, the United States Supreme Court found in *Gonzales v. Raich*, 125 S. Ct. 2195 (2005) there to be no legally recognizable medical necessity exception under Federal Law to the prohibition of possession, use, manufacture or distribution of marijuana under federal law, and

WHEREAS, in February 2009 the U.S. Attorney General stated that federal law enforcement official would ease enforcement at medical marijuana dispensaries, and

WHEREAS, the establishment of, or the issuance or approval of any permit, certificate of occupancy, or other entitlement for the legal establishment of a medical marijuana dispensary in the City of Orinda will result in an immediate and actual threat to public health, safety and welfare in that the Orinda Municipal Code does not currently regulate the location and operation of medical marijuana dispensaries and does not have a regulatory program in effect that will appropriately regulate the location, establishment, and operation of medical dispensaries in the City, and

WHEREAS, there is no feasible alternative to satisfactorily study the potential impact identified above as well or better than the adoption of this interim urgency moratorium ordinance.

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Orinda as follows:

SECTION 1. For purposes of this ordinance, "medical marijuana dispensary" means any for profit or not-for-profit facility or location, whether permanent or temporary, where the owner(s) or operator(s) intends to or does possess and distribute marijuana for any purpose.

SECTION 2. For the period of this ordinance, or any extension thereof, a medical marijuana dispensary shall be considered a prohibited use in any zoning district of the City, even if located within an otherwise permitted use. No permits or authorizations for a medical marijuana dispensary shall issue while this ordinance is in effect.

SECTION 3. The City Council finds that the establishment and operation of medical marijuana dispensaries will result in a current and immediate threat to public health, safety, or welfare, as discussed above, in that the City does not have a regulatory program in effect that will appropriately regulate the location, establishment, and operation of medical dispensaries in the City.

SECTION 4. The City Council finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) (Title 14, of the California Code of Regulations) because it has no potential for resulting in physical change to the environment, directly or indirectly; it prevents changes in the environment pending the completion of the contemplated Municipal Code review.

SECTION 5. The City Manager or her designees shall: (1) review and consider options for the regulation of medical marijuana dispensaries in the City, including, but not limited to the development of appropriate rules and regulations governing the location and operation of such establishments in the City; (2) meet with medical patients, advocates, law enforcement representatives, and other interested parties; and (3) shall file a written report describing the measures which the City has taken to address the conditions which led to the adoption of this ordinance with the City Council ten (10) days prior to the expiration of this interim urgency ordinance, or any extension thereof, and such report shall be made available to the public.

SECTION 6. This interim urgency ordinance is also adopted pursuant to Section 65858 of the California Government Code.

SECTION 7. This interim urgency ordinance shall take effect immediately upon its adoption by a four-fifths (4/5) vote of the City Council. This interim urgency ordinance shall continue in effect for forty-five (45) days from the date of its adoption and shall thereafter be of no further force and effect unless, after notice pursuant to California Government Code Section 65090 and a public hearing, the City Council extends this interim urgency ordinance for an additional period of time pursuant to California Government Code Section 65858.

SECTION 8. If any section, subsection, subdivision, paragraph, sentence, clause, phrase or word in this Ordinance or any part thereof is for any reason, held to be unconstitutional or invalid, or ineffective by any court of competent jurisdiction such decision shall not affect the validity of effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, subdivision, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases or words be declared unconstitutional.

PASSED and ADOPTED this _____day of _____ 2009.

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

_____
Sue Severson, Mayor

ATTEST:

_____
Michele Olsen, City Clerk

Government Code Section 65858

65858. (a) Without following the procedures otherwise required prior to the adoption of a zoning ordinance, the legislative body of a county, city, including a charter city, or city and county, to protect the public safety, health, and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time. That urgency measure shall require a four-fifths vote of the legislative body for adoption. The interim ordinance shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may extend the interim ordinance for 10 months and 15 days and subsequently extend the interim ordinance for one year. Any extension shall also require a four-fifths vote for adoption. Not more than two extensions may be adopted.

(b) Alternatively, an interim ordinance may be adopted by a four-fifths vote following notice pursuant to Section 65090 and public hearing, in which case it shall be of no further force and effect 45 days from its date of adoption. After notice pursuant to Section 65090 and public hearing, the legislative body may by a four-fifths vote extend the interim ordinance for 22 months and 15 days.

(c) The legislative body shall not adopt or extend any interim ordinance pursuant to this section unless the ordinance contains legislative findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance would result in that threat to public health, safety, or welfare. In addition, any interim ordinance adopted pursuant to this section that has the effect of denying approvals needed for the development of projects with a significant component of multifamily housing may not be extended except upon written findings adopted by the legislative body, supported by substantial evidence on the record, that all of the following conditions exist:

(1) The continued approval of the development of multifamily housing projects would have a specific, adverse impact upon the public health or safety. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date that the ordinance is adopted by the legislative body.

(2) The interim ordinance is necessary to mitigate or avoid the specific, adverse impact identified pursuant to paragraph (1).

(3) There is no feasible alternative to satisfactorily mitigate or avoid the specific, adverse impact identified pursuant to paragraph (1) as well or better, with a less burdensome or restrictive effect, than the adoption of the proposed interim ordinance.

(d) Ten days prior to the expiration of that interim ordinance or any extension, the legislative body shall issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance.

(e) When an interim ordinance has been adopted, every subsequent

ordinance adopted pursuant to this section, covering the whole or a part of the same property, shall automatically terminate and be of no further force or effect upon the termination of the first interim ordinance or any extension of the ordinance as provided in this section.

(f) Notwithstanding subdivision (e), upon termination of a prior interim ordinance, the legislative body may adopt another interim ordinance pursuant to this section provided that the new interim ordinance is adopted to protect the public safety, health, and welfare from an event, occurrence, or set of circumstances different from the event, occurrence, or set of circumstances that led to the adoption of the prior interim ordinance.

(g) For purposes of this section, "development of multifamily housing projects" does not include the demolition, conversion, redevelopment, or rehabilitation of multifamily housing that is affordable to lower income households, as defined in Section 50079.5 of the Health and Safety **Code**, or that will result in an increase in the price or reduction of the number of affordable units in a multifamily housing project.

(h) For purposes of this section, "projects with a significant component of multifamily housing" means projects in which multifamily housing consists of at least one-third of the total square footage of the project.

Compilation of Medical Marijuana Ordinances
for Local Jurisdictions within Alameda and Contra Costa Counties

Conta Costa County

82-4.292 Medical marijuana dispensary.

"Medical marijuana dispensary" means any facility or location, stationary or mobile, where marijuana is made available, sold, transmitted, given, distributed to, or otherwise provided by or to a primary caregiver, qualified patient, or a person with an identification card, in accordance with the State Compassionate Use Act of 1996 (Health and Safety Code Section 11362.5). A "medical marijuana dispensary" does not include the following uses, as long as their location is otherwise regulated by this code or applicable law and as long as their use complies strictly with applicable law including but not limited to Health and Safety Code Section 11362.5: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; a residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.
(Ord. 2008-05 § 3).

8-2.022 Prohibited uses.

The following land uses are prohibited at all locations in all zoning districts in the county:
(a) Any use that violates state or federal law.
(b) Medical marijuana dispensary.
(Ord. 2008-05 § 2).

2006-12Urgency interim ordinance prohibiting establishment of medical marijuana dispensaries (Special)2006-13Establishes fire protection facilities fees (Not codified)2006-14Adopts fees (Not codified)2006-15Special tax for police protection (Special)2006-16Rezone (Special)2006-17Urgency interim ordinance prohibiting establishment of medical marijuana dispensaries

2007-15Urgency interim ordinance prohibiting establishment of medical marijuana dispensaries

City of Martinez

CHAPTER 22.41 MEDICAL MARIJUANA DISPENSARIES

22.41.010 Purpose.

The purpose of this Chapter is to protect the public safety, health, and welfare of the citizens of the City by prohibiting the use of residential districts for medical marijuana dispensaries and restricting the operation of medical marijuana dispensaries to specific commercial zones that permit uses most close approximating those of medical marijuana dispensaries.
(Ord. 1277 C.S. § 2 (part), 2000.)

22.41.020 Medical Marijuana Dispensary.

A "medical marijuana dispensary" ("dispensary") is a facility where marijuana is made available for medical purposes in accordance with Health and Safety Code Section 11362.5 (Proposition 215).
(Ord. 1277 C.S. § 2 (part), 2000.)

22.41.030 Effect on Federal Law.

Nothing in this Chapter shall counteract the substance, interpretation, effect, or application of any federal law, statute, regulation, act, administrative or judicial court decision, departmental directive, or guideline promulgated or authorized by any body of the federal government respecting the distribution, use, sale, cultivation or furnishing of marijuana.
(Ord. 1277 C.S. § 2 (part), 2000.)

22.41.040 Nonconforming Use.

No use which purports to have distributed, sold or provided marijuana to persons covered by the definitional categories listed in Proposition 215 prior to the enactment of this Chapter shall be deemed to have been a legally established use under the provisions of this Code and such use shall not to be entitled to claim legal nonconforming status pursuant to Sections 22.38.010 and 22.38.020.
(Ord. 1277 C.S. § 2 (part), 2000.)

22.41.050 Conditional Use Permit Required.

A. No person shall operate or allow or suffer the operation of a medical marijuana dispensary except in compliance with a Conditional Use Permit issued pursuant to Chapter 22.40.

B. The application for such Conditional Use Permit may be filed by the operator of the medical marijuana dispensary and shall be countersigned by the owner of the subject lot or parcel, or by the authorized agent of the owner, pursuant to the requirements of Section 22.40.030.

C. All property owners within 1,000 feet of the proposed marijuana dispensary shall be noticed of the conditional use public hearing as described in Section 22.40.040(B) of this Code.
(Ord. 1277 C.S. § 2 (part), 2000.)

22.41.060 Allowed Districts.

Medical marijuana dispensaries may be permitted only in the Neighborhood Commercial (NC) District, Central Commercial (CC) District, Service Commercial (SC) District, and Thoroughfare Commercial (TC) District.
(Ord. 1277 C.S. § 2 (part), 2000.)

22.41.070 Standards for Medical Marijuana Dispensaries.
A. No dispensary shall be located less than 1,000 feet from any park, elementary or secondary school; child daycare center or church which includes a elementary or secondary school or child daycare center, 300 feet from property used for residential purposes.
B. Distance shall be measured from the building which contains the dispensary to the property line of the enumerated use using the most direct vehicular or pedestrian access route, whichever is shorter.
(Ord. 1277 C.S. § 2 (part), 2000.)

22.41.080 Findings for Conditional Use Permit.
A. The Planning Commission or City Council, on appeal, shall grant a Conditional Use Permit for a dispensary located a permissible distance from each of the sites listed in Section 22.31.070 only if the applicable criteria specified in Section 22.41.070 are met and each of the findings specified in subsection B of this Section can be made as to the proposed dispensary.
B. In addition to the findings required pursuant to Section 22.40.070, a Conditional Use Permit for a medical marijuana dispensary shall be granted only if the Planning Commission, or the City Council, on appeal, makes all of the following additional findings of fact:
1. The medical marijuana dispensary, as proposed and at the location requested, will not create a potentially adverse impact on surrounding uses; and
2. The medical marijuana dispensary, as proposed and at the location requested, will be compatible with the adjacent zoning districts; and
3. The proposed medical marijuana dispensary will not result in the substantial aggravation of crime problems or make law enforcement unduly difficult.
C. The Planning Commission, or City Council, on appeal, shall deny the application where the information submitted by the applicant and/or presented at the public hearing fails to satisfactorily substantiate each such finding.
(Ord. 1277 C.S. § 2 (part), 2000.)

22.41.090 Conditions.
In addition to any conditions imposed pursuant to Chapter 22.40, a Conditional Use Permit for a medical marijuana dispensary shall include such of the following additional conditions:
A. The use shall be conducted in compliance with the provisions of Health and Safety Code Section 11362.5.
B. No persons under the age of 18 shall be permitted in the dispensary at any time.
C. No retail sales of any products other than medical marijuana are permitted at the dispensary.
D. The dispensary shall be operated in strict compliance with regulations adopted by the Chief of Police:
1. The regulations shall address, but are not limited to, such issues as record keeping, proper identification for patients, storage of marijuana on the site, on-site cultivation, delivery and maximum amount dispensed in any single transaction;
2. The regulations may be amended from time to time by the Chief. The dispensary shall be operated in strict compliance with the most currently adopted regulations sent by registered mail to the operator of the dispensary.
E. All transactions shall occur at the dispensary and all medical marijuana shall be dispensed directly to the patient or the designated caregiver. No employee, owner or volunteer of the dispensary may provide medical marijuana to any patient or designated caregiver at any location other than inside the building of the dispensary.

F. Cultivation of medical marijuana on-site is only allowed if specifically authorized by the Conditional Use Permit.
G. Hours of operation shall be limited to the hours between 9:00 a.m. and 8:00 p.m. 7 days a week.
H. The operator and/or property owner shall be required to report any illegal activity occurring on the site or associated with the dispensary.
I. Each dispensary shall display in a manner legible and visible to its clientele:
1. Notice that persons under the age of 18 are not allowed in the dispensary; and
2. Notice that all illegal activity will be reported to the police; and
3. A request that there be no smoking of medical marijuana in the vicinity of the dispensary.
(Ord. 1277 C.S. § 2 (part), 2000.)

San Pablo

Medical Marijuana Dispensary. Any facility or location where a primary caregiver makes available, sells, transmits, gives, or otherwise provides medical marijuana to two or more persons with identification cards or qualified patients. A medical marijuana dispensary shall not include the following uses, as long as the location of such uses are otherwise regulated by this code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice licensed pursuant to Chapter 8.5 of Division 2 of the Health and Safety Code, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq.

17.30.096 Medical marijuana dispensaries prohibited pending clarification of state and federal regulations.

A. Medical marijuana dispensaries are prohibited in the city of San Pablo until the discrepancies between state and federal regulations are clarified and presented to the city council, and the council determines on the basis of such clarification to amend this chapter to permit a medical marijuana dispensary within the city. No medical marijuana dispensary shall operate, locate or otherwise be permitted within the city of San Pablo until the discrepancy between state and federal regulations are clarified and presented to the city council, and the council determines on the basis of such studies to amend this chapter to permit a medical marijuana dispensary within the city.

B. The city shall not issue, approve or grant any permit, license or other entitlement for the establishment or operation of a medical marijuana dispensary until such studies have been completed and presented to the city council, and the council determines on the basis of such studies to amend this chapter to permit one or more medical marijuana dispensaries within the city.

C. The city council may by resolution authorize staff to obtain and/or undertake studies to assist the community in understanding the issues and impacts associated with medical marijuana dispensaries.

D. The city manager shall report to the city council periodically on issues associated with medical marijuana dispensaries, including without limitation any experiences learned from other communities, as well as the estimated effort and expense that would be required to undertake additional studies.

E. Nothing in this chapter shall be construed as imposing on the city any mandatory obligation to undertake, complete or fund any study.

(Ord. 06-022 § 7, 2006)

El Cerrito

Chapter 6.80 MEDICAL MARIJUANA DISPENSARIES

Sections:

6.80.010 Definitions.
6.80.020 Medical marijuana dispensary as a prohibited use.
6.80.030 Separate offense for each day.
6.80.040 Public nuisance.
6.80.050 Criminal penalties.
6.80.060 Civil injunction.
6.80.070 Administrative remedies.

6.80.010 Definitions.

The following words or phrases, whenever used in this chapter, shall be given the following definitions:

"Medical marijuana dispensary" means any facility or location where a primary caregiver makes available, sells, transmits, gives, or otherwise provides medical marijuana to two or more persons with identification cards or qualified patients. A medical marijuana dispensary shall not include the following uses, as long as the location of such uses are otherwise regulated by this code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health & Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health & Safety Code, a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health & Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code, a residential hospice licensed pursuant to Chapter 8.5 of Division 2 of the Health & Safety Code, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health & Safety Code, as long as any such use complies strictly with applicable law, including, but not limited to, Health & Safety Code Sections 11362.5 et seq.

"Person with an identification card" shall have the meaning set forth in California Health & Safety Code Section 11362.7, as may be amended from time to time, or any successor statute.

"Primary caregiver" shall have the meaning set forth in California Health & Safety Code Section 11362.7, as may be amended from time to time, or any successor statute.

"Qualified patient" shall have the meaning set forth in California Health & Safety Code Section 11362.7, as may be amended from time to time, or any successor statute.

(Ord. 2006-8 § 1 (part), 2006: Ord. 2006-6 § 1 (part), 2006.)

6.80.020 Medical marijuana dispensary as a prohibited use.

A medical marijuana dispensary, as defined in this chapter, is prohibited in all zones throughout the city of El Cerrito.

(Ord. 2006-8 § 1 (part), 2006: Ord. 2006-6 § 1 (part), 2006.)

6.80.030 Separate offense for each day.

Any person who violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

(Ord. 2006-8 § 1 (part), 2006: Ord. 2006-6 § 1 (part), 2006.)

6.80.040 Public nuisance.

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is hereby declared a public nuisance and may be abated by the city pursuant to Chapter 8.34 of this code.
(Ord. 2006-8 § 1 (part), 2006: Ord. 2006-6 § 1 (part), 2006.)

6.80.050 Criminal penalties.

Any violation of any provision of this chapter shall be deemed a misdemeanor.
(Ord. 2006-8 § 1 (part), 2006: Ord. 2006-6 § 1 (part), 2006.)

6.80.060 Civil injunction.

The violation of any provision of this chapter shall be and is hereby declared to be a public nuisance and contrary to the public interest and shall, at the discretion of the city, create a cause of action for injunctive relief.
(Ord. 2006-8 § 1 (part), 2006: Ord. 2006-6 § 1 (part), 2006.)

6.80.070 Administrative remedies.

In addition to the civil remedies and criminal penalties set forth above, any violation of the provisions of this chapter may be subject to administrative remedies, as set forth by Chapter 1.14 of this code.
(Ord. 2006-8 § 1 (part), 2006: Ord. 2006-6 § 1 (part), 2006.)

Pleasant Hill

18.50.140 Medical marijuana dispensaries.

Medical marijuana dispensaries are prohibited in all base zoning districts and overlay zoning districts. (Ord. 819 § 5, 2007)

798	6-6-05	Interim medical marijuana dispensaries prohibition (Not codified)
799	7-18-05	Extends interim medical marijuana dispensaries prohibition (Not codified)
811	5-15-06	Extends interim medical marijuana dispensaries prohibition (Not codified)
819	5-21-07	Adds § 18.50.140; amends §§ 18.15.040, 18.25.020 and 18.140.010, medical marijuana dispensaries (18.15, 18.25, 18.50, 18.140)

Medical marijuana dispensary. As used herein the term "medical marijuana dispensary" or "dispensary" means any facility or location where medical marijuana is made available to and/or distributed by or to two or more persons in the following categories: a primary caregiver, a qualified patient, or a person with an identification card, in strict accordance with California Health and Safety Code section 11362.5 et seq. A "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by this code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code section 11362.5 et seq. and the Pleasant Hill Municipal Code, including but not limited to the city's zoning ordinance.

City of Concord

ARTICLE XI. MEDICAL MARIJUANA DISPENSARIES

Sec. 18-330. Definitions.

. Medical Marijuana Dispensary or Dispensary means any facility or location, whether fixed or mobile, where medical marijuana is made available to or distributed by or distributed to one (1) or more of the following: a primary caregiver, a qualified patient, or a patient with an identification card. All three of these terms are identified in strict accordance with California Health and Safety Code Section 11362.5 et seq. A medical marijuana dispensary shall not include the following uses, as long as the location of such uses is otherwise regulated by this code or applicable law: A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; A healthcare facility licensed pursuant to Chapter 2 of Divisions 2 of the Health and Safety Code; A facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; A residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as such use complies strictly with applicable law, including but not limited to, Health and Safety Code Section 11362.5 et seq.

(Ord. No. 05-9)

Sec. 18-331. Medical Marijuana Dispensary as a Prohibited Use.

A medical marijuana dispensary as defined in Section 18-330 is prohibited in all zones and no conditional use permit shall be issued therefore.

(Ord. No. 05-9)

Brentwood

9.50.030 Medical marijuana dispensaries prohibited.

A. Medical marijuana dispensaries are prohibited in the city of Brentwood and no medical marijuana dispensary shall operate, locate or otherwise be permitted within the city of Brentwood.

B. The city shall not issue, approve or grant any permit, license or other entitlement for the establishment or operation of a medical marijuana dispensary. (Ord. 855 § 2, 2008; Ord. 838 § 1, 2006)

9.50.010 Findings and purpose.

A. In enacting this chapter, the city council finds as follows:

1. In 1970, Congress enacted the Controlled Substances Act (CSA) which, among other things, makes it illegal to import, manufacture, distribute, possess or use marijuana in the United States.

2. In 1996, the voters of the state of California approved Proposition 215 (the "Act" (codified as Health and Safety (H&S) Code Section 11362.5 et seq.).

3. The Act creates a limited exception from criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances.

4. On January 1, 2004, SB 420 went into effect. SB 420, known as the "Medical Marijuana Program" (codified as H&S Code Sections 11362.7—11362.83) ("MMP") was enacted by the state legislature to clarify the scope of the Act and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420.

5. The Act expressly anticipates the enactment of additional local legislation. It provides: "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for non-medical purposes." Health and Safety Code Section 11362.5.

6. The city council takes legislative notice, based on the materials presented to the council during the legislative process leading to the enactment of this chapter, and amendments thereto, of the fact that several California cities and counties which have permitted the establishment of medical marijuana dispensaries have experienced serious adverse impacts associated with and resulting from such dispensaries. According to these communities, according to news stories widely reported, and according to medical marijuana advocates, medical marijuana dispensaries have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need in the areas immediately surrounding such medical marijuana dispensaries. The city of Brentwood reasonably could anticipate experiencing similar adverse impacts and effects.

7. The city council further takes legislative notice that as of January 2006, at least fifty-six cities and six counties in California have adopted moratoria or interim ordinances prohibiting medical marijuana dispensaries.

8. The Drug Enforcement Agency ("DEA"), the federal agency charged with enforcing the CSA, has expressed its view that state medical marijuana laws like Proposition 215 and the MMP impede its ability to enforce the CSA; have "caused conflict and confusion among the law enforcement community", are "viewed as jeopardizing the historical cooperation between federal, state, and local drug enforcement officials", and "undercut enforcement of the Controlled Substances Act." While the city council in no manner intends or undertakes by the adoption of the ordinance codified in this chapter to enforce federal law, the city council is concerned that the comments by the DEA reflect to some extent the adverse secondary impacts identified above. The city also is concerned about interfering with federal law enforcement efforts.

9. The city council further takes legislative notice that concerns about non-medical marijuana use arising in connection with Proposition 215 and the MMP also have been recognized by state and federal courts. See, *e.g., People ex rel. Lungren v. Peron,* 59 Cal.App.4th 1383, 1386-1387 (1997); *Gonzales v. Raich,* 125 S.Ct. 2195, 2214 n.43 (2005).

10. The city council further takes legislative notice that the use, possession, distribution and sale of marijuana remain illegal under the CSA; that the federal courts have recognized that despite California's Act and MMP, marijuana is deemed to have no accepted medical use (*Gonzales v. Raich,* 125 S. Ct. 2195; *United States v. Oakland Cannabis Buyers' Cooperative,* 532 U.S. 483 (2001)); that medical necessity has been ruled not to be a defense to prosecution under the CSA (*United States v. Oakland Cannabis Buyers' Cooperative,* 532 U.S. 483); and that the federal government properly may enforce the CSA despite the Act and MMP. (*Gonzales v. Raich,* 125 S. Ct. 2195.)

11. An ordinance prohibiting medical marijuana dispensaries, and prohibiting the issuance of any permits, licenses and entitlements for medical marijuana dispensaries, is necessary and appropriate to maintain and protect the public health, safety and welfare of the citizens of Brentwood.

B. The purpose of this chapter is to prohibit the operation and location of medical marijuana dispensaries in the city of Brentwood given the negative and detrimental effects and impacts on communities of medical marijuana dispensaries. (Ord. 855 § 1, 2008; Ord. 838 § 1, 2006)

9.50.020 Definitions and exceptions.

A. For the purposes of this chapter, "medical marijuana dispensary' means any facility or location, whether fixed or mobile, where medical marijuana is provided, sold, made available, or otherwise distributed to one or more of the following: a primary caregiver, a qualified patient or a person with an identification card.

B. For the purposes of this chapter, the terms "primary caregiver," "qualified patient" and "person with an identification card" shall be as defined in Health and Safety Code Section 11362.7.

C. For purposes of this chapter, a medical marijuana dispensary shall not include the following uses, provided that the location of such uses are otherwise regulated by applicable law, and further provided any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq.:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.

2. A healthcare facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.

3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.1 of Division 2 of the Health and Safety Code.

4. A residential care facility for the elderly, licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.

5. A residential hospice, or a home health agency, licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code. (Ord. 838 § 1, 2006)

Oakley

CHAPTER 12
MEDICAL MARIJUANA DISPENSARIES

(Sec.1, Urgency Ordinance No. 21-07, adopted December 10, 2007)

4.12.102 Findings and Purpose.

A. In enacting this Chapter, the City Council hereby finds and determines as follows:

1. In 1970, Congress enacted the Controlled Substances Act ("CSA") which, among other things, makes it illegal to import, manufacture, distribute, possess or use marijuana in the United States.

2. In 1996, the voters of the State of California approved Proposition 215, codified as California Health and Safety ("H&S") Code section 11362.5, et. seq. (the "Act").

3. The Act creates a limited exception from criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances.

4. On January 1, 2004, SB 420 went into effect. SB 420, known as the "Medical Marijuana Program," codified as H&S Code sections 11362.7-11362.83 ("MMP"), was enacted by the state Legislature to clarify the scope of the Act and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420.

5. The Act expressly anticipates the enactment of additional local legislation. It provides: "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for non-medical purposes." H&S Code §11362.5.

6. The City Council takes legislative notice, based on the materials presented to the Council during the legislative process leading to the enactment of this Chapter, that other California cities and counties which have permitted the establishment of medical marijuana dispensaries have experienced serious adverse impacts associated with and resulting from such dispensaries. According to these communities, widely reported news stories, and medical marijuana advocates, medical marijuana dispensaries have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need in the areas immediately surrounding such medical marijuana dispensaries. The City of Oakley reasonably could anticipate experiencing similar adverse impacts and effects.

7. The City Council further takes legislative notice that as of November 2007, at least 86 cities in California have adopted temporary moratoria, interim ordinances or permanent ordinances prohibiting medical marijuana dispensaries.

8. The Drug Enforcement Agency ("DEA"), the federal agency charged with enforcing the CSA, has expressed its view that state medical marijuana laws like Proposition 215 and the MMP impede its ability to enforce the CSA, have "caused conflict and confusion among the law enforcement community," are viewed as jeopardizing the historical cooperation between federal, state, and local drug enforcement officials," and "undercut enforcement of the Controlled Substances Act." While the City Council in no manner intends or undertakes by the adoption of this Chapter to enforce federal law, the City Council is concerned that the comments by the DEA reflect to some extent the negative impacts of medical marijuana dispensaries identified above. The City also is concerned about interfering with federal law enforcement efforts.

9. The City Council further takes legislative notice that concerns about non-medical marijuana use arising in connection with Proposition 215 and the MMP also have been recognized

by state and federal courts. *See, e.g., People ex rel. Lungren v. Peron,* 59 Cal.App 4th 1383, 1386-1387 (1997); Gonzales v. Raich, 125 S.Ct. 2195, 2214 n.43 (2005).

10. The City Council further takes legislative notice that the use, possession, distribution and sale of marijuana remain illegal under the CSA that the federal courts have recognized that despite California's Act and the MMP marijuana is deemed to have no accepted medical use (*Gonzales v. Raich*, 125 S. Ct. 2195; *United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483 (2201)), that medical necessity has been ruled not to be a defense to prosecution under the CSA (United States v. Oakland Cannabis Buyers' Cooperative, 532 U.S. 483), and that the federal government properly may enforce the CSA despite the Act and MMP. (*Gonzales v. Raich*, 125 S. Ct. 2195.)

11. Allowing medical marijuana dispensaries and issuing permits, licenses or other entitlements providing for the establishment and/or operation of medical marijuana dispensaries poses a current and immediate threat to the public health, safety and welfare; issuing such entitlements would result in that threat to the public health, safety and welfare; and that therefore an ordinance prohibiting medical marijuana dispensaries, and prohibiting the issuance of permits, licenses and entitlements for medical marijuana dispensaries is necessary and appropriate to maintain and protect the public health, safety and welfare of the citizens of Oakley.

B. The purpose of this Chapter is to prohibit the operation and location of medical marijuana dispensaries in the City of Oakley given the negative and detrimental effects and impacts on communities of medical marijuana dispensaries.

(Sec.1, Ordinance No. 01-09, adopted December 09, 2008)

4.12.104 Definitions and Exceptions.

a. For the purposes of this chapter, "medical marijuana dispensary" means any facility or location, whether fixed or mobile, where medical marijuana is provided, sold, made available, or otherwise distributed to one or more of the following: a primary caregiver, a qualified patient or a person with an identification card.

b. For the purposes of this chapter, the terms "primary caregiver", "qualified patient", and "person with an identification card" shall be as defined in H&S Code § 11362.7.

c. For the purposes of this chapter, a "medical marijuana dispensary" shall not include the following uses, provided that the location of such uses are otherwise regulated by applicable law, and further provided any such use complies strictly with applicable law including, but not limited to, H&S Code § 11362.5, et. seq.:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the H&S Code.
2. A healthcare facility licensed pursuant to Chapter 2 of Division 2 of the H&S Code.
3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.1 of Division 2 of the H&S Code.
4. A residential care facility for the elderly, licensed pursuant to Chapter 3.2 of Division 2 of the H&S Code.
5. A residential hospice, or a home health agency, licensed pursuant to Chapter 8 of Division 2 of the H&S Code.

(Sec.1, Urgency Ordinance No. 21-07, adopted December 10, 2007)

4.12.106 Medical marijuana dispensaries prohibited

A. Medical marijuana dispensaries are prohibited in the City of Oakley. No medical marijuana dispensary shall operate, locate or otherwise be permitted within the City of Oakley.

B. The City shall not issue, approve or grant any permit, license or other entitlement for the establishment or operation of a medical marijuana dispensary.

(Sec.2, Ordinance No. 01-09, adopted December 09, 2008)

Pinole
17.32.130 MEDICAL MARIJUANA DISPENSARIES

A. ***MEDICAL MARIJUANA.*** Defined as set forth in California Health and Safety Code § 1362.5 et seq.

B. ***MEDICAL MARIJUANA DISPENSARY.*** Any facility or location, whether fixed or mobile, where medical marijuana is made available to, distributed by, or distributed to one or more of the following:

1. A qualified patient,

2. A person with an identification card, or

3. A primary caregiver.

4. All three of these terms are defined in strict accordance with California Health and Safety Code section 11362.5 et seq. Unless otherwise regulated by this Code or applicable law, a "medical marijuana dispensary" shall not include the following uses: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq.

C. A "Medical Marijuana Cooperative" is where two or more persons who associate to collectively or cooperatively cultivate, use, transport, possess, administer, deliver, or give away medical marijuana.

D. A medical marijuana dispensary and/or medical marijuana cooperative shall be allowed in any zoning district only if consistent with state and federal law. (Ord. 2007-02 § 1, 2007)

City of Albany

Medical Marijuana Dispensary means any facility in a single fixed location where a primary caregiver makes available, sells, transmits, gives or otherwise provides medical **marijuana**, or cannabis, to two (2) or more qualified patients or persons with an identification card. For purposes of this Chapter, medical **marijuana** dispensary does not include licensed clinics, health care facilities, residential care facilities, hospices or home health agencies listed in California Health and Safety Code §11362.7(d)(1).

The following terms related to medical **marijuana** facilities has the following meanings:

a. **Applicant** means a person who is required to file an application for a permit under Subsection 20.20.110 of the Chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee or agent of a medical **marijuana** dispensary.

b. **Primary Caregiver** shall have the same definition as in California Health and Safety Code §11362.7(d), as it may be amended from time to time.

c. **Qualified Patient** shall have the same definition as in California Health and Safety Code §11362.7(f), as it may be amended from time to time, with the additional stipulation that a qualified patient shall have a valid identification card, as defined in definition f. below.

d. **Attending Physician** shall have the same definition as in California Health and Safety Code §11362.7(a), as it may be amended from time to time.

e. **Written Documentation** shall have the same definition as in California Health and Safety Code §11362.7(i), as it may be amended from time to time.

f. **Identification Card** shall mean any photo identification card issued by an entity whose procedures for validation and issuance have been approved by the Albany Chief of Police.

g. **Person with an Identification Card** shall have the same definition as in California Health and Safety Code §11362.7(h), as it may be amended from time to time.

h. **Serious Medical Condition** shall have the same definition as in California Health and Safety Code §11362.7(d), as it may be amended from time to time.

i. **Chief of Police** shall mean the Chief of Police of the City of Albany and his or her authorized representatives.

20.20.110 Medical Marijuana Dispensaries.

A. Purpose. The purpose and intent of this subsection to regulate medical **marijuana** dispensaries in order to promote the health, safety, morals, and general welfare of the residents and businesses within the city.

B. Findings. The City Council adopts this Subsection 20.20.110 based upon the following findings:

1. The voters of the State of California approved Proposition 215 (codified as California Health and Safety Code §§ 11362.5 et seq., and entitled "The Compassionate Use Act of 1996").

2. The intent of Proposition 215 was to enable persons who are in need of **marijuana** for specified medical purposes to obtain and use it under limited, specified circumstances.

3. The State enacted Senate Bill 420 in October 2003 (commencing with California Health and Safety Code § 11362.7), relating to controlled substances, to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations laws consistent with SB 420.

4. To protect the public health, safety, and welfare, it is the desire of the City Council to modify the Municipal Code to be consistent with SB 420, regarding the location and operation of Medical Marijuana Dispensaries.

5. It is the City Council's intention that nothing in this subsection shall be deemed to conflict with Federal law as contained in the Controlled Substances Act, 21 U.S.C. § 841, nor to otherwise permit any activity that is prohibited under that Act or other applicable Federal or State law.

6. It is the City Council's intention that nothing in this subsection shall be construed to allow persons to engage in conduct that endangers others or causes a public nuisance, allow the use of marijuana for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise illegal.

7. In a Bulletin to All California Law Enforcement Agencies, dated June 22, 2005 the Attorney General has stated that, through the Compassionate Use Act, California has an express policy decriminalizing the medically approved use of marijuana, which policy must necessarily govern the exercise of discretionary arrest powers by California peace officers and counsels against effecting arrests and seizures under Federal law when the use, possession, or cultivation of the marijuana appears legal within the meaning of California's Compassionate Use Act.

8. Pursuant to California Health and Safety Code §§ 11362.7 et seq., the State Department of Health shall be responsible for establishing and maintaining a voluntary identification card program.

9. California Health and Safety Code § 11362.71(b) requires every county health department, or its designee, to implement a procedure to accept and process applications from those seeking to join the identification program in the manner set forth in California Health and Safety Code §§ 11362.71 et seq.

10. The adoption and implementation of this subsection will not have a significant effect on the environment, because City regulations, which have been established previously, or are established by this subsection, are adequate to insure there will be no significant impacts. An initial study did not reveal any potentially significant impacts, which cannot be avoided under previously existing regulations or additional regulations, contained herein. This subsection establishes standards for the location and operation of medical marijuana dispensaries in accordance with State law, and shall be subject to on-going oversight by the Chief of Police, the Community Development Director, and the Planning and Zoning Commission, with potential appeal to the City Council.

C. Business License Investigation Required. Prior to filing an application for a use permit for a medical marijuana dispensary, the applicant must provide information to the Chief of Police for a business license investigation and pay the business license investigation fee as set forth in the Master Fee Schedule, no part of which shall be refundable. If the applicant is a corporation, the complete identification information of each of the officers and directors of such corporation and of each stockholder owning more than ten (10%) percent of the stock of the corporation shall be set forth as described in paragraph C.1.a. If the applicant is a partnership, the complete identification information of each of the partners, including limited partners, shall be set forth as described in paragraph C.1, below:

1. Any applicant for such a permit shall furnish the following information:

a. Applicant(s) Name. The full name (including any current or prior aliases, or other legal names the applicant is or has been known by, including maiden names), date of birth, social security number, present residence address, and telephone number of the applicant;

b. Applicant(s) Mailing Address. The address to which notice of action on the application is to be mailed;

c. Previous Addresses. Previous residence addresses for the past five (5) years immediately prior to the present address of the applicant;

d. Verification of Age. Written proof that the applicant is over the age of eighteen (18) years of age;

e. Physical Description. Applicant's height, weight, color of eyes and hair;

f. Photographs. Two (2) passport quality color photographs for identification purposes;

g. Nothing herein contained shall be construed to deny to the Police Department the right to take the fingerprints and additional photographs of the applicant.

h. Employment History. All business, occupation, or employment of the applicant for the five (5) years immediately preceding the date of the application;

i. Tax History. The business tax history of the applicant with respect to any medical marijuana dispensary, including whether such person, in previously operating in this or another city, county or state under license has had a business license revoked or suspended, the reason therefor, and the business or activity or occupation subsequent to such action of suspension or revocation;

j. The names and telephone numbers of the person or persons to be regularly engaged in the operation of the proposed dispensary, whether an employee, volunteer or contractor. The application shall also identify those persons, including telephone numbers (i.e., emergency contact), having management and supervisory responsibilities for the proposed dispensary. Every person listed as owner, manager, supervisor or employee must submit fingerprints and other necessary information for a background check to the Albany Police Department, and be photographed for identification purposes. In addition, any new employees, independent contractors, other persons and/or volunteers who will work at the proposed medical marijuana dispensary must submit their complete identification information to the police department no less than thirty (30) days prior to the start of their employment;

k. Authorization for the Chief of Police or his designee to seek verification of the information contained in the application;

l. Applicant's Certification. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct.

2. The Chief of Police shall commence the background investigation of any applicant immediately upon its filing and shall complete such review within sixty (60) days. Where the Chief of Police determines that good cause exists as to why such review cannot be completed within sixty (60) days, the Chief may allow for no more than two (2) extensions of thirty (30) days each.

3. Within ten (10) business days after the filing of an application, the Chief of Police shall reject any application and so notify the applicant, if the application has been improperly completed or if it is incomplete.

4. Effect of Incomplete Filing. Upon notification that an application submittal is incomplete, the applicant shall be granted an extension of time to submit all materials required to complete the application within ten (10) days. If the application remains incomplete in excess of ten (10) days the application shall be deemed withdrawn and a new application submittal shall be required in order to proceed with the subject request. The time period for granting or denying a permit shall be stayed during the period in which the applicant is granted an extension of time.

5. The Chief of Police shall be responsible for verifying factual information in the application, including names, addresses and other information on the applicant operator and its employees of the proposed dispensary.

6. Upon completion of the background investigation, the Chief of Police shall reject any permit that meets any of the following criteria:

a. The proposed dispensary does not comply with requirements of this Chapter.

b. The applicant has knowingly made a false statement of material fact or has knowingly omitted one (1) or more material facts from the application.

c. The operation of the proposed dispensary at the proposed location is prohibited by any State or local law or regulation.

d. The applicant, his or her agent or employees, or any person who is exercising managerial authority on behalf of the applicant has been convicted of a felony, or of a misdemeanor involving moral turpitude, or has engaged in misconduct related to the qualifications, functions or duties of a permittee. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

e. The applicant has violated any local or State law, statute, rule or regulation respecting the distribution, possession, or consumption of marijuana.

f. The applicant has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

g. The applicant or the operator listed in the application is less than eighteen (18) years of age.

7. In the event of denial, notifications and reasons for denial shall be set forth in writing and shall be sent to the applicant by means of registered or certified mail or hand delivery.

8. In the event of acceptance, notification will be set forth in writing and sent to the applicant by means of registered or certified mail or hand delivery. A copy of the notice shall be sent to the Community Development Department.

D. Prohibited Activities. The following activities are prohibited from being associated with a medical marijuana dispensary. The term "premises" as used herein shall include the building or building space occupied by the dispensary, as well as any accessory structures, parking areas, or other surroundings within two hundred (200) feet of any entrance to the dispensary.

1. A medical marijuana dispensary will not be permitted as an accessory use to any other permitted use.

2. The commercial sale of any product, good, or service is prohibited. The term "commercial sale" does not include the provision of medical marijuana, or devices directly

related to the administration of medical marijuana, on terms and conditions that are consistent with this subsection and applicable law.

3. No dispensary shall hold or maintain a license from the State Department of Alcohol Beverage Control to sell or furnish alcoholic beverages, or to operate a business that sells or furnishes alcoholic beverages.

4. The display, sale or use on the premises of alcohol, or tobacco is prohibited.

5. No marijuana shall be smoked, ingested or otherwise consumed on the premises of a dispensary. The term "premises" as used herein shall include the building or building space occupied by the dispensary, as well as any accessory structures, parking areas, or other surroundings within two hundred (200) feet of any entrance to the dispensary.

6. Notwithstanding California Health and Safety Code § 11362.77, no living marijuana plants maybe cultivated or maintained on the premises of any medical marijuana dispensary.

7. Patients who are patrons of the dispensary shall not medicate in public places, including any street or sidewalk, within the City of Albany.

8. No dispensary shall utilize the services of an attending physician on the premises to evaluate patients and provide a recommendation for medical marijuana.

9. Dispensary sales to any person attempting to obtain a doctor's recommendation onsite by telephone, facsimile, electronic mail or other communication methods are strictly prohibited.

10. Any off-site sale of marijuana, including but not limited to sale via internet, or delivery of marijuana to any location outside of the dispensary, is prohibited.

E. Standards for Facility Location. The following standards shall apply to the physical location of any medical marijuana dispensary:

1. No more than one (1) medical marijuana dispensary shall be permitted to be located and operational within the limits of the City of Albany at any time.

2. A permitted medical marijuana dispensary shall be limited to a single, fixed location, within a building.

3. No dispensary shall have a principal entrance located within ninety-five (95) feet of a parcel of land in an R – Residential zoning district.

4. The principal entry to any dispensary shall be located within clear sight of a public street, and shall not be within twenty-five (25) feet of any residential entrance, including the principal entry of any multi-unit residential building.

5. No medical marijuana dispensary shall be located within a one thousand (1,000) foot distance of any of the following:

a. Any other such dispensary, including any dispensary located in an adjacent jurisdiction;

b. Any schools, child daycare centers, public libraries or public community centers;

c. Any municipal parks or playgrounds.

6. No medical marijuana dispensary shall be located within a one thousand (1,000) foot distance of any of the following businesses, where such businesses were existing at the time of approval of a use permit for a medical marijuana dispensary:

a. Any smoke-shop which sells paraphernalia for consuming drug or tobacco products.

b. Any "youth-oriented establishment" characterized by either or both of the following: (1) the establishment advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors; or (2) the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

7. Exception to one thousand (1,000) foot distance specified in paragraph 6, above: The Planning and Zoning Commission may permit a new youth-oriented establishment to be located within one thousand (1,000) feet of an existing medical **marijuana** dispensary, subject to the following findings:

a. *The subject youth-oriented establishment would not be a permitted use in a residential district; and*

b. *The proximity of the existing medical marijuana dispensary would not have any detrimental effect on the minor patrons of the youth-oriented establishment.*

F. Use Permit and Business License Required. Upon approval of a business license investigation report all of the following steps are required to be completed prior to initiating operation of a medical **marijuana** dispensary:

1. The applicant shall apply for a conditional use permit. All use permit applications for a medical **marijuana** dispensary shall be accompanied by a fee for a major use permit as set forth in the Master Fee Schedule, no part of which shall be refundable.

2. Upon receipt of a use permit application the Community Development Department shall process the application and forward it to the Fire Department, which within a period of thirty (30) days from the date of application shall review records or make an inspection of the premises proposed to be used as a medical **marijuana** dispensary, and shall make a written recommendation to the Community Development Department concerning compliance with the respective requirements.

3. The Planning and Zoning Commission shall schedule and conduct a public hearing on the use permit application, under Subsection 20.100.030 and may grant the permit provided that applicant meets the findings required by Subsection 20.100.030.D and the findings required for a medical **marijuana** dispensary listed in paragraph H. below.

4. Upon approval of a use permit, the applicant shall be required to obtain a business license prior to commencing operation of the dispensary.

G. Use Permit Application Requirements. An application for a use permit shall be submitted on a standard application form provided by the Community Development Department, and shall include the following materials and information at a minimum:

1. A report from the Chief of Police approving a business license investigation report, as required in paragraph C. above.

2. A statement of qualifications, on the part of the applicant and any employees involved in transactions relating to the dispensing of medical **marijuana**.

3. A statement of the need for a medical marijuana dispensary to be located within the City limits of Albany.

4. Evidence of consent by the owner of the property on which the dispensary is to be located to file application for a use permit.

5. A site plan, drawn to accurate scale, showing the location and function of all buildings on the site; parking areas with delineation of spaces; landscaped areas; adjacent rights-of-way, including sidewalks and street frontage; and the locations and functions of buildings on abutting properties.

6. A floor plan of the building delineating separate areas for a waiting room, dispensing area, and storage area, and the use of any other spaces within the building, or in any accessory buildings on the site.

7. Plans and descriptions of a security system, including lighting, alarm and locking systems.

8. Plans for signage, showing locations, dimensions, materials, colors and content of all exterior signs, including identification signs and required informational signs.

9. A narrative description of proposed operations, including the following:

a. Number of persons expected to be employed on the site, including any volunteer staff, and the functions to be performed by each person.

b. Anticipated numbers of persons to be served by the dispensary.

c. How the operation of the dispensary will comply with the performance standards listed in paragraph K. below for dispensing, security, site management, personnel management, and records maintenance.

H. Findings Required for Use Permit. In granting a use permit for a medical marijuana dispensary, the Planning and Zoning Commission shall make all of the following findings:

1. *All findings required by Subsection 20.100.030.D for granting a use permit.*

2. *The proposed location, design and operation of the dispensary are consistent with applicable State and local laws.*

3. *The Chief of Police has determined that the nature of the site of and the immediate area of the site are not expected to present law enforcement problems.*

4. *All standards for facility location, as stated in this subsection, are met.*

5. *The site design and floor plan will minimize the potential for crime.*

6. *All reasonable measures have been incorporated in the plan to control patrons' conduct inside and outside and to avoid public nuisance.*

I. Standard Conditions of Use Permit.

1. **Term of Permit.** The term of a use permit for a medical marijuana dispensary shall be limited to one (1) year. An extension may be considered as provided in paragraph J. below.

2. **Compliance with Laws.** The premises occupied by a dispensary shall comply with all applicable local, State and Federal rules, regulations and laws including but not limited to building codes and the Americans with Disabilities Act.

3. **Limitations on Clientele.** Persons to whom marijuana may be dispensed shall be limited to persons who are residents of Alameda County and who hold Identification Cards issued by any entity whose procedures for validation and issuance have been approved by the Albany Chief of Police.

4. **Compensation.** A dispensary may receive compensation only for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient, or person with an identification card, to enable that person to use marijuana pursuant to California Health and Safety code §11362.7 et seq., or for payment for out-of-pocket expenses incurred in providing those services, or both. However, any dispensary must pay applicable sales tax on the services and obtain and maintain the applicable seller's or similar permit from the Franchise Tax Board or other regulatory agency.

5. **Staffing Requirements.** A dispensary shall be staffed with at least one (1) person during hours of operation who shall not be responsible for dispensing medical marijuana. It shall be unlawful for the permittee, operator, or other persons in charge of any medical marijuana dispensary to employ, or accept volunteer services from, any person who is not at least eighteen (18) years of age.

6. **Operating Hours.** Specific hours of operation shall be as established by a condition of a use permit, provided that no dispensary shall be permitted to be open at any time between the hours of 7:00 p.m. and 8:00 a.m.

7. **Limitations on Inventory.** The quantities of marijuana that may be stored or maintained on the premises of the dispensary at any time shall not exceed the quantities specified by California Health and Safety Code § 11362.77 for each qualified patient, including any additional quantity authorized according to paragraph (b) of § 11362.77, provided further that the following limitations shall apply:

It shall be a violation of this subsection if at any time the amount of marijuana on the premises exceeds the lesser of:

a. An amount of marijuana equal to eight (8) ounces per primary caregiver or person with an identification card who has received marijuana from the dispensary during the previous thirty (30) calendar days, or

b. A total of twenty (20) pounds of marijuana.

8. **Interior Layout.** A dispensary shall have a lobby waiting area at the entrance to receive clients, and a separate and secure designated area for dispensing medical marijuana to qualified patients or designated caregivers. A dispensary shall have a locked safe on premises, with a performance rating of TL-30 or greater, identified as a part of the security plan, for after-hours storage of medical marijuana.

9. **Primary Entrance.** The primary entrance to a dispensary shall be located and maintained clear of barriers, landscaping and similar obstructions so that it is clearly visible from public streets and sidewalks.

10. **Alarm System.** A professionally monitored robbery alarm system shall be installed and maintained in good working condition.

11. **Security Cameras.** Security surveillance cameras shall be installed to monitor the main entrance and exterior of the premises to discourage loitering, crime, illegal or nuisance activities.

12. **Community Relations Contact.** A dispensary shall provide the Chief of Police and the Community Development Director with the name, phone number and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the dispensary. The dispensary shall make every good faith effort to encourage neighborhood residents to call this person to try to solve operating problems, if any, before any calls or complaints are made to the City or Police Department.

13. **Odors Control.** A dispensary shall have an air treatment system that ensures off-site odors shall not result.

14. **Signage.** Signs on the exterior of the facility shall conform to all applicable regulations of Section 20.32 of this Chapter, except neither the Community Development Director nor the Planning and Zoning Commission shall issue a permit for a temporary sign of any nature. In addition, the following specific regulations shall apply to any medical marijuana dispensary:

a. The building entrance to a dispensary shall be clearly and legibly posted with a notice indicating the following:

1) Smoking, ingesting or consuming marijuana on the premises or in the vicinity of the dispensary is prohibited.

2) Persons under the age of eighteen (18) are precluded from entering the premises unless they are a qualified patient or a primary caregiver and are in the presence of a parent or guardian.

b. Signs on the premises shall not obstruct the entrance or windows.

c. Business identification signage shall be limited to that needed for identification only. Signs shall not contain any textual or graphic that identifies, advertises or lists the services offered.

15. **Performance.** The dispensary shall observe all performance standards for facility operation as enumerated in paragraph K. below.

16. **Inspection by City; Right of Entry by Officials.** Officials of the City, including the Chief of Police and members of his/her department, shall have the right to enter the premises during regular business hours for the purpose of making reasonable inspections to enforce compliance with building, fire, electrical, plumbing or health regulations, and for the purpose of determining that the provisions of this section, and other provisions of law, are being complied with. The Chief of Police and the permittee shall endeavor to develop a protocol to conduct inspections that address medical privacy rights of clientele.

17. **Additional Conditions.** The dispensary shall meet any specific, additional operating procedures and measures as may be imposed as conditions of approval by the Planning and Zoning Commission or the City Council to insure that the operation of the dispensary is consistent with the protection of the health, safety and welfare of the community, qualified patients, and primary caregivers, and will not adversely affect surrounding uses.

J. Extension of Use Permit. Upon filing of an application for an extension of a valid use permit, the Planning and Zoning Commission may consider extension of the use permit at annual intervals, for no more than twelve (12) months each, after holding a public hearing and considering reports from the Community Development Director and the Chief of Police regarding the dispensary's compliance with applicable laws, requirements and conditions. After granting two (2) 12-month extensions of a use permit, the Planning and Zoning Commission shall have the discretion to extend the interval to twenty-four (24) months. Upon application for an extension of a use permit, the Chief of Police may require current background investigations, with fingerprinting, of dispensary owners, managers and other personnel, with costs of such investigations to be borne by the applicant.

K. Performance Standards for Facility Operation.

1. **Site Management Standards.** The operator of the dispensary shall be responsible for ongoing management of the site and its immediate surroundings according to the following standards:

a. The entry to the dispensary shall be locked at all times. Only persons with bona fide purposes shall be allowed inside the dispensary.

b. The dispensing area shall be limited to dispensing personnel and one (1) person with an identification card and primary caregiver at any time.

c. Restrooms shall be locked and under control of the manager at all times.

d. The operator shall provide patients with a list of the rules and regulations governing medical marijuana use and consumption within the City and recommendations on sensible marijuana etiquette.

e. The operator shall make every good faith effort to encourage neighborhood residents to call the dispensary's designated community relations contact person to try to solve operating problems, if any, before any calls or complaints are made to the City.

f. The operator shall take all reasonable steps to avoid the incidence of nuisances in public areas, sidewalks, alleys and areas surrounding the premises and adjacent properties during business hours.

1) "Reasonable steps" shall include calling the police in a timely manner; and requesting those engaging in objectionable activities to cease those activities, unless personal safety would be threatened in making the request.

2) "Nuisance" includes but is not limited to disturbances of peace, open public consumption of marijuana or alcohol, excessive pedestrian or vehicular traffic, illegal drug activity, harassment of passerby, excessive littering, excessive loitering, illegal parking, excessive loud noises, especially late at night or early in the morning hours, lewd conduct or police detentions and arrests.

g. The operator shall clear the sidewalks adjoining the premises daily plus ten (10) feet beyond property lines along the street as well as any parking lots under the control of the operator as needed to control litter, debris and trash.

h. The operator shall remove all graffiti from the premises and parking lots under the control of the operator within seventy-two (72) hours of its application.

2. **Security Standards.** The dispensary shall provide adequate security on the premises including lighting and alarms, to insure the safety of persons and to protect the premises from theft. Security video shall be maintained for seventy-two (72) hours.

a. 24-hour Emergency Contact. A dispensary shall provide the Police Chief with the name, phone number and facsimile number of an emergency contact, accessible twenty-four (24) hours per day, whom one can notify if there are urgent operating problems with the dispensary.

b. Weapons. No firearms or other weapons shall be permitted on the premises, including any firearm defined in Sections 12001(b), 12001(c), 12001(d), or any weapon or device whose possession is prohibited by Section 12020, 12220, 12280, 12303, 12320, 12321, 12355, or 12520 of the California Penal Code.

3. **Dispensing Standards.**

a. A dispensary shall dispense medical **marijuana** to meet monthly medication needs of qualified patients, similar to typical pharmacy operations. The dispensary shall strongly discourage and avoid daily or weekly visits by patients as a routine practice.

b. A dispensary shall label its products by stating the name of the dispensary and the weight of **marijuana**. All such labels shall be made in ink, and shall be physically attached to each container of **marijuana**, sealed inside the container with the **marijuana**, or both.

c. Dispensary operations shall not result in the illegal redistribution of medical **marijuana** obtained from the dispensary, or the use of **marijuana** in any manner that violates local, State or City laws or regulations.

d. A dispensary shall provide to the City, if so requested by the Community Development Director, written evidence that the dispensary is not engaged in interstate commerce.

4. **Personnel Management Standards.**

a. Every owner or operator of a permitted medical **marijuana** dispensary shall register every employee or volunteer with the Albany Police Department at least thirty (30) days prior to the commencement of the employee's period of employment at the medical **marijuana** dispensary. Failure to comply with this subsection shall be grounds for suspension or revocation of the permit. The following procedures shall be observed:

1) Each employee or volunteer shall be required to provide two recent passport-quality color photographs and, at the discretion of the Chief of Police, shall be fingerprinted by the Police Department for purposes of identification.

2) Each new employee or volunteer shall provide the following information on a form provided by the Police Department; name, current residence address, and telephone number; date of birth; height, weight, color of eyes, and hair.

3) The owner or operator of a dispensary shall report immediately to the Community Development Department and the Chief of Police any and all changes of address or ownership of the dispensary, and any changes of

employees, volunteers or contractors who work in the dispensary, including those have terminated employment with the dispensary.

4) Each employee, volunteer, contractor or other person working at the dispensary site shall be identified at all times by a visibly-displayed photo identification card, containing, at a minimum, the name and position of the person.

b. This information will be considered confidential and will not be released unless pursuant to subpoena issued by a court of competent jurisdiction.

c. The dispensary operator shall provide dispensary staff with appropriate training for their intended duties to ensure understanding of rules and procedures regarding dispensing in compliance with State and local law.

5. **Record Maintenance.**

a. City requirements for record maintenance shall not violate State laws regarding patient confidentiality.

b. Each operator of a dispensary shall maintain a current register of the names of all employees, including volunteers, currently employed by the dispensary, and shall disclose such registration for inspection by any City officer or official for purposes of determining compliance with the requirements of this subsection.

c. A dispensary shall maintain records of all persons with an identification card, and primary caregivers, using only the identification card number issued by the County or other entity approved by the Chief of Police, as a protection of the confidentiality of the cardholders.

d. Information on prior years operations shall be provided annually, as required in this Chapter. The operator shall adjust the operations as necessary to address issues.

e. Each dispensary shall allow the Chief of Police, or his designee, to have access to the dispensary's books, records, accounts, and all data relevant to its permitted activities for the purpose of conducting an audit or examination to determine compliance with this Code and applicable law. Books, records, accounts and any and all relevant data will be produced no later than twenty-four (24) hours after receipt of the written request(s) by the Chief of Police.

L. Violations.

1. **Scope of Liability for Violations.** Whenever in this subsection any act or omission is made unlawful, it shall include causing, permitting, aiding, abetting, suffering or concealing the fact of the act or omission.

2. **Remedies for Enforcement of Violations.** Remedies include but are not limited to:

a. **Criminal Penalties.** Any person who violates, causes, or permits another person to violate any provision of this subsection is subject to prosecution for a misdemeanor offense, and upon conviction thereof, shall be punished.

b. **Civil Injunction.** The violation of any provision of this subsection shall be, and hereby is, declared to be contrary to the public interest and shall, at the discretion of the City, create a cause of action for injunctive relief.

c. **Administrative Remedies.** In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this subsection may be subject to administrative remedies as set forth by City ordinance. Administrative remedies shall include the ability of the Chief of Police to order the immediate closure of the dispensary, pending a hearing before the City Council, if evidence is discovered that would lead a reasonable person to conclude that any of the following conditions exists:

1) The provisions of the Medical Marijuana Dispensary Regulations are being, or have been, violated;

2) Any condition is discovered that would warrant the denial of the issuance of such conditional use permit or business license in the first instance;

3) The Chief of Police (or designee) determines that the immediate closure of the dispensary is in order to protect the public peace or welfare.

d. **Abatement.** Any use or condition caused, or permitted to exist, in violation of any provision of this subsection shall be, and hereby is, declared a public nuisance and may be summarily abated by the City.

e. **Revocation or Nonrenewal of the Permit.** The terms of the use permit will be enforced as proved by Section 20-36 of this Chapter, which subsection contains a process for the consideration of the revocation of a use permit for reasons that include, among other things, failure to comply with the terms and conditions of the use permit, or for any grounds that would warrant denial of the issuance of a use permit in the first instance.

3. **Remedies Cumulative.** All remedies prescribed under this chapter shall be cumulative and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.

4. **Separate Offense for Each Day.** Any person that violates any provision of this Chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

M. No Mandatory Duty of Care. This subsection is not intended to and shall not be construed as or given effect in a manner that imposes on the City of Albany or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

N. Liability. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the City of Albany.

(Ord. No. 07-01 §4)

Berkeley

Chapter 12.26
PATIENTS ACCESS TO MEDICAL CANNABIS ACT OF 2008

Sections:

12.26.010 Purposes.
12.26.030 Definitions.
12.26.040 Medical cannabis collectives.
12.26.050 Availability in pharmacies.
12.26.060 Quality control encouraged.
12.26.070 Permissible quantities of medical cannabis.
12.26.080 Transportation of medical cannabis.
12.26.090 Medical cannabis paraphernalia.
12.26.100 Police procedures and training.
12.26.110 Peer Review Committee.
12.26.120 Emergency Distribution.
12.26.130 Medical cannabis dispensary.
12.26.140 Compliance with all applicable laws.

Title.

This initiative shall be known and may be cited as the Patients Access to Medical Cannabis Act of 2008. (Ord. 7068-NS § 1, 12/08/08)

Findings And Declarations.

The People of the City of Berkeley find all of the following to be true:

A. We strongly support the right of seriously ill patients to use medical cannabis in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraines, or any other serious illness or condition for which cannabis provides relief.

B. We strongly oppose the arrest, prosecution, and incarceration of persons legally-qualified under the Compassionate Use Act of 1996 (Proposition 215) by local, state, or federal law enforcement.

C. There is a need in our community for safe and affordable access to medical cannabis.

D. In the absence of meaningful state regulation, it is necessary for local governments to adopt policies and guidelines for the purpose of facilitating safe access and protecting patients.

E. The provision of medical cannabis should occur in a safe and orderly manner in order to protect patients and the community. In the absence of clear guidelines, there has been a lack of consistency in the permitting and regulation of medical cannabis dispensing.

F. There is a need for specific instructions for City officials and staff in order to eliminate this inconsistency.

G. There are no scientifically valid studies that determine the yield of medicine based on specific numbers of plants or the quantity of medication necessary for a patient. Berkeley's arbitrarily- low cultivation limits place undue burdens on local patients, and therefore require revision based on patient's needs.

H. The People of the City of Berkeley further find and declare that we enact this initiative pursuant to the powers reserved to the State of California, the City of Berkeley, and its people under the Tenth Amendment to the United States Constitution. (Ord. 7068-NS § 2, 12/08/08)

12.26.010 Purposes.

The purpose of this chapter is to implement California Health and Safety Code Section 11362.5, known as the Compassionate Use Act of 1996 and to regulate the location of facilities lawfully used for the storage, dispensing and use of medical cannabis, other than the cultivation or possession of medical cannabis by an individual patient or caregiver at the patient or caregiver's home, lawfully incident to the residential use of that home. The Compassionate Use Act is the state law removing state law penalties for qualified patients, and primary care givers to those patients, for possession and cultivation of a personal amount of medical cannabis for qualified patients. This chapter is intended:

A. To help ensure that seriously ill Berkeley residents can obtain and use cannabis for medical purposes where that medical use has been deemed appropriate and recommended or approved by a physician who has determined that the patient's health would benefit from the use of cannabis in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraines, or any other serious illness or condition for which cannabis provides relief.

B. To help ensure that qualified patients and their primary caregivers who obtain or cultivate cannabis solely for the qualified patient's medical treatment with the recommendation or approval of a physician are not subject to criminal prosecution or sanction.

C. To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of medical cannabis to patients whose medical doctors approve or recommend medical cannabis to treat a serious illness or condition.

D. To protect citizens from the adverse impacts of irresponsible medical cannabis distribution, storage and use practices. (Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6826-NS § 1 (part), 2004: Ord. 6620-NS § 1, 2001)

12.26.030 Definitions.

A. "Cannabis" shall have the same meaning as the definition of "Marijuana" provided in California Health and Safety Code Section 11018 at this time, but if that definition is amended by state law in the future, as amended. Currently, under Health and Safety Code Section 11018, "marijuana means all parts of the plant cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination."

B. "Qualified patient" shall mean a person who has a written or oral recommendation or approval from a licensed medical doctor to use cannabis for medical purposes.

C. "Primary caregiver" shall mean the individual person or persons designated by a qualified patient, provided that said individual person or persons has consistently assumed responsibility for the housing, health, or safety of the qualified patient.

D. "Medical cannabis collective" shall mean a cooperative, affiliation, association, or collective of persons comprised exclusively and entirely of qualified patients and the primary caregivers of those patients, the purpose of which is to provide education, referral, or network

services to qualified patients, and to facilitate or assist in the cultivation and manufacture or acquisition of medical cannabis for qualified patients.

E. "Medical cannabis dispensary" shall mean any person or entity that dispenses, cultivates, stores or uses medical cannabis except where such cultivation, storage or use is by a patient or that patient's caregiver, incidental to residential use by such patient, and for the sole use of the patient who resides there. (Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6826-NS § 1 (part), 2004: Ord. 6620-NS § 1, 2001)

12.26.040 Medical cannabis collectives.

A. Pooling of Resources Recognized. The City of Berkeley recognizes that some qualified patients may not have primary caregivers and also may not be able to undertake all the physical activities necessary to cultivate cannabis for personal medical use. Accordingly, this section recognizes that qualified patients may join together with or without their primary caregivers to form medical cannabis collectives for the purpose of acquiring or cultivating and manufacturing medical cannabis solely for the personal medical use of the members who are qualified patients. The City recognizes that not all members of a medical cannabis collective will perform the same tasks or contribute to the collective in an equal manner. Accordingly, medical cannabis collectives are free to decide how to best pool their resources and divide responsibilities in cultivating medical cannabis for the personal medical use of their members who are qualified patients.

B. Restriction on Membership. Membership in a medical cannabis collective must be restricted to qualified patients and their primary caregivers. However, primary caregivers shall not be allowed to obtain cannabis for their own personal use. In addition, a primary caregiver cannot be a member of a medical cannabis collective, unless the primary caregiver's qualified patient is also a member.

C. Restriction on Distribution to Non-Members. Medical cannabis collectives and each member thereof, shall not sell, barter, give away, or otherwise distribute cannabis to non-members of the medical cannabis collective.

D. Amount of Dried Cannabis and Plants. Medical Cannabis Collectives may possess a reasonable quantity of dried cannabis and cannabis plants to meet the needs of their patient members. Medical Cannabis Collectives shall not accumulate more cannabis than is necessary to meet the personal medical needs of their Qualified Patients.

E. Size of Visible Cannabis Gardens. The City of Berkeley recognizes that large scale outdoor cultivation of medical cannabis will create a risk of theft and violence due to the high monetary value of a large number of cannabis plants and the relative ease of theft by trespassing. Large-scale outdoor cannabis cultivation will also unfairly create tension and fear among the surrounding residents of trespassing, thefts, and violence. Accordingly, any medical cannabis collective or Collectives that cultivate medical cannabis plants outdoors (excluding secure rooftops or balconies that are not visible from other buildings or land) or in any place that is visible with the naked eye from any public or other private property, can only cultivate 10 such plants at one time on a single parcel or adjacent parcels of property.

F. Restriction on Excessive Cultivation and Possession. Nothing in this Section shall authorize any individual, organization, affiliation, collective, cooperative or other entity to (1) cultivate or possess a quantity of medical cannabis that is inappropriate for the personal medical need of the patient(s) for whom it is intended; or (2) cultivate or possess any quantity of cannabis for non-medical purposes. (Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6620-NS § 1, 2001)

12.26.050 Availability in pharmacies.

To encourage the standardization of medical cannabis, the City of Berkeley urges the federal government to reschedule cannabis so that it may be made available to qualified patients through legally licensed pharmacies and urges the state government to urge the federal government to do so as well. (Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6620-NS § 1, 2001)

12.26.060 Quality control encouraged.

The City of Berkeley strongly encourages all qualified patients, primary caregivers, and medical cannabis collectives to consult the available cannabis cultivation literature to ensure that the medical cannabis lawfully cultivated under state law is free of undesired toxins or molds. The City of Berkeley cautions that natural molding from improper storage, certain soils for indoor growing, foreign materials that unintentionally becomes lodged in cultivated cannabis, and pesticides, can all potentially render the medical cannabis totally unsafe for consumption. Collectives are encouraged to use their best effort to determine whether or not cannabis is organically grown. (Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6620-NS § 1, 2001)

12.26.070 Permissible quantities of medical cannabis.

The Compassionate Use Act allows Qualified Patients or their Primary Caregivers to possess or cultivate cannabis for the Qualified Patient's "personal medical purposes." Because each Qualified Patient will have different needs regarding appropriate Personal Medical Use, this Section seeks to ensure that each Qualified Patient or his or her Primary Caregiver can possess enough cannabis to meet the Qualified Patient's personal medical need.

A. Cultivation of Medical Cannabis. Notwithstanding any other provision of law, and pursuant to California Health and Safety Code Section 11362.77(c) as effective on January 1, 2004, all cultivation of cannabis for medical purposes by a Qualified Patient or Primary Caregiver shall be lawful and shall in no way be subject to criminal prosecution when said cultivation is conducted solely for the personal medical purposes of Qualified Patients. Such lawful cultivation may include the cultivation and possession of both female and male plants at all stages of growth, clones, seedlings, and seeds, and related cultivation equipment and supplies. Medical Cannabis Collectives, Qualified Patients, Primary Caregivers, and cultivators may cultivate individually or collectively.

B. Possession of Medical Cannabis. Notwithstanding any other provision of law, and pursuant to California Health and Safety Code Section 11362.77(c) as effective on January 1, 2004, all possession of cannabis for medical purposes by a Qualified Patient or Primary Caregiver shall be lawful and shall in no way be subject to criminal prosecution when said possession is undertaken solely for the personal medical purposes of Qualified Patients. Medical Cannabis Collectives, Qualified Patients, Primary Caregivers, and cultivators may possess individually or collectively.

C. Property and Equipment. The rental, leasing, or providing of equipment or space utilized for cultivation, processing, or storage of medical cannabis in accordance with this Section shall be deemed lawful.

D. Size of Visible Cannabis Gardens. The City of Berkeley recognizes that large scale outdoor cultivation of cannabis may create a risk of theft. Accordingly, any Medical Cannabis Collective that cultivates cannabis plants outdoors (excluding secure rooftops, balconies, or other locations that are not visible from other buildings or land) or in a place that is visible with the naked eye from other public or private property, may cultivate no more than ten such visible plants at one time on a single parcel of property. (Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6620-NS § 1, 2001)

12.26.080 Transportation of medical cannabis.

A qualified patient or a primary caregiver of a qualified patient may transport medical cannabis within the City of Berkeley to the extent that the quantity transported and the method, timing, and distance of the transportation are reasonably related to the qualified patient's current medical need at the time of transport. (Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6620-NS § 1, 2001)

12.26.090 Medical cannabis paraphernalia.

A qualified patient and the primary caregiver of a qualified patient may possess paraphernalia that the qualified patient needs to smoke or otherwise consume medical cannabis. (Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6620-NS § 1, 2001)

12.26.100 Police procedures and training.

A. Within six months of the date that this chapter becomes effective, the training materials handbooks, and printed procedures of the Police Department shall be updated to reflect its provisions. These updated materials shall be made available to police officers in the regular course of their training and service.

B. Medical cannabis-related activities shall be the lowest possible priority of the Police Department.

C. Qualified patients, their primary caregivers, and medical cannabis collectives who come into contact with law enforcement will not be cited or arrested and dried cannabis or cannabis plants in their possession will not be seized if they are in compliance with the provisions of this chapter.

D. Qualified patients, their primary caregivers, and medical cannabis collectives who come into contact with law enforcement and cannot establish or demonstrate their status as a qualified patient, primary caregiver, or medical cannabis collective, but are otherwise in compliance with the provisions of this chapter, will not be cited or arrested and dried cannabis or cannabis plants in their possession will not be seized if (1) based on the activity and circumstances, the officer determines that there is no evidence of criminal activity; (2) the claim to be a qualified patient, primary caregiver, or medical cannabis collective is credible; and (3) proof of status as a qualified patient, primary caregiver, or medical cannabis collective can be provided to the Police Department within three business days of the date of contact with law enforcement. (Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6620-NS § 1, 2001)

12.26.110 Peer Review Committee.

The purpose of this Section is to ensure that medical cannabis provision in Berkeley is conducted in a safe and orderly manner to protect the welfare of Qualified Patients and the community.

A. Peer Review Committee. The Medical Cannabis Collectives and dispensaries in operation at the time this Chapter becomes effective shall each designate no more than two spokespeople to serve on a peer review committee that shall meet at least one time each month for the purpose of overseeing the operation of Medical Cannabis Collectives and dispensaries and ensuring their compliance with operational and safety standards published annually by the committee.

B. New Dispensaries. The peer review committee shall consult with any individual, organization, affiliation, collective, cooperative or other entity which seeks to open a new Medical Cannabis Collective or dispensary in Berkeley or to relocate an existing Medical Cannabis Collective or dispensary. The peer review committee shall certify that the proposed Medical Cannabis Collective or dispensary has a strategy for compliance with the published safety and operational standards before the new Medical Cannabis Collective or dispensary commences lawful operation.

C. New Members on the Peer Review Committee. Upon commencing lawful operation in Berkeley, each new Medical Cannabis Collective or dispensary shall designate no more than two spokespeople to serve on the peer review committee.

D. Operational Oversight. The peer review committee will monitor the compliance of all Medical Cannabis Collectives or dispensaries in Berkeley for the purpose of correcting any violations of the safety and operational standards. Medical Cannabis Collectives or dispensaries found to be in willful or ongoing violation of the standards shall be removed from membership on the peer review committee and shall be deemed in violation of this Chapter and referred to the City for appropriate action.

E. Immunity. Individuals operating Medical Cannabis Collectives or dispensaries represented on the peer review committee shall be deputized by the City of Berkeley as Drug Control Officers for the purpose of providing immunity under the provisions of Section 885(d) of Title 21 of the United States Code. (Ord. 7068-NS § 3 (part), 12/08/08)

12.26.120 Emergency Distribution.

The City of Berkeley strongly opposes the federal prosecution of medical cannabis patients, caregivers, and providers. The City shall make all reasonable accommodation for the provision of medical cannabis to Qualified Patients or their Primary Caregivers in the event that access to medical cannabis is interrupted or severely diminished as the result of civil or criminal federal law enforcement activity. The City shall accommodate distribution of medical cannabis as early as possible following such a disruption and no later than thirty (30) days after the disruption. (Ord. 7068-NS § 3 (part), 12/08/08)

12.26.130 Medical cannabis dispensary.

No more than three medical cannabis dispensaries shall be located within the limits of the City of Berkeley. No such dispensary shall be located within a 1000 foot range of another such dispensary, nor within 1000 feet of a public elementary, middle or high school. Any dispensary existing at the time this ordinance becomes effective, may continue at its current location, notwithstanding its violation of the de-concentration requirements of this section. The City Manager may issue regulations to implement this section. (Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6826-NS § 2 (part), 2004)

12.26.140 Compliance with all applicable laws.

Nothing in this chapter shall be construed as excusing any person or entity from compliance with all other applicable federal, state and local laws. The City may make compliance with such laws a condition of deeming such person or entity in compliance with local law, except to the extent it would conflict with the purposes of this chapter. (Ord. 7068-NS § 3 (part), 12/08/08: Ord. 6826-NS § 2 (part), 2004)

Dublin

Chapter 5.58
MEDICAL MARIJUANA DISPENSARIES

Sections:

5.58.010 Definitions.
5.58.020 Operation of medical marijuana dispensaries prohibited.

5.58.010 Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, the following definitions shall apply:

A. "Medical marijuana" is marijuana authorized in strict compliance with Health and Safety Code Section 11362.5 et seq.

B. "Medical marijuana dispensary" means any facility or location, whether fixed or mobile, where medical marijuana is made available to, distributed by, or distributed to two (2) or more of the following: a qualified patient, a person with an identification card, or a primary caregiver.

A medical marijuana dispensary shall not include the following uses, so long as such uses comply with this code, Health and Safety Code Section 11362.5 et seq., and other applicable law:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.
2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.
3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code.
4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.
5. A hospice or a home health agency, licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

C. "Person with an identification card" shall have the meaning given that term by Health and Safety Code Section 11362.7.

D. "Primary caregiver" shall have the meaning given that term by Health and Safety Code Section 11362.7.

E. "Qualified patient" shall have the meaning given that term by Health and Safety Code Section 11362.7. (Ord. 9-06 § 2 (part))

5.58.020 Operation of medical marijuana dispensaries prohibited.

No person shall operate or permit to be operated a medical marijuana dispensary in or upon any premises in the city. (Ord. 9-06 § 2 (part))

Fremont

Sec. 8-2136.5. Dispensary, medical marijuana.

"Medical marijuana dispensary" means any facility or location, whether fixed or mobile, where medical marijuana is made available to, or distributed to, or distributed by, one or more of the following: a primary caregiver, a qualified patient, or a patient with an identification card. All three of these terms are identified in strict accordance with California Health and Safety Code sections 11362.5 et seq. A "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses is otherwise regulated by this Code or applicable law: A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a healthcare facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as such use complies strictly with applicable law, including but not limited to, Health and Safety Code sections 11362.5 et seq.

(Ord. No. 16-2006, § 1, 7-25-06.)

ARTICLE 21.3. SPECIAL PROVISIONS APPLYING TO MISCELLANEOUS USES

TABLE INSET:

§ 8-22137.1.	Dispensaries for medical marijuana a prohibited use.

Livermore

Chapter 5.80
MEDICAL MARIJUANA DISPENSARIES

Sections:

5.80.010 Definitions.
5.80.020 Medical marijuana dispensary as a prohibited use.

5.80.010 Definitions.

"Medical marijuana dispensary" means any facility or location, whether fixed or mobile, where medical marijuana is made available to or distributed by or distributed to one or more of the following: a primary caregiver, a qualified patient, or a patient with an identification card. All three of these terms are identified in strict accordance with California Health and Safety Code Section 11362.5 et seq.

A medical marijuana dispensary shall not include the following uses, as long as the location of such uses is otherwise regulated by this code or applicable law:

A. A clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code; or a facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code;

B. A health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code;

C. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code;

D. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code;

E. A hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as such use complies strictly with applicable law, including but not limited to, California Health and Safety Code Section 11362.5 et seq. (Ord. 1828 § 1, 2007)

5.80.020 Medical marijuana dispensary as a prohibited use.

A medical marijuana dispensary as defined in LMC 5.80.010 shall not be established, operated, or maintained at any location within the city of Livermore. (Ord. 1828 § 1, 2007)

City of Oakland

Chapter 5.80 MEDICAL CANNABIS DISPENSARY PERMITS

Sections:

5.80.010 Definitions.
5.80.020 Permit required.
5.80.030 Regulations.
5.80.040 Performance standards.
5.80.050 Regulatory fees.
5.80.060 Compensation.
5.80.070 Appeals.
5.80.080 Prohibited operations.
5.80.090 Liability.

5.80.010 Definitions.

The following words or phrases, whenever used in this chapter, shall be given the following definitions:

"Cannabis" or "Marijuana" shall be the same, and as may be amended, as is defined in OMC 8.46.020.

"Cannabis dispensary", hereinafter dispensary, shall be construed to include any association, Medical Cannabis Association, cooperative, affiliation, or collective of persons where four or more "qualified patients" and/or "primary care givers", in possession of an identification card, or written recommendation, issued by the county of Alameda, or the state of California, or another agency recognized by the city of Oakland pursuant to California Health and Safety Code Section 11362.7 et seq, to provide education, referral, or network services, and facilitation or assistance in the lawful production, acquisition, and distribution of medical cannabis.

"Excessive profits" means the receipt of consideration of a value substantially higher than the reasonable costs of operating the facility.

"Medical cannabis collective" means a cooperative affiliation, association or collective of persons comprised of no more than three "qualified patients" and/or their "primary caregivers" with valid identification cards or written recommendation, to provide education, referral, or network services and to facilitate/assist in the lawful production, acquisition, and provision of medical marijuana to their qualified patients.

"Primary caregiver" shall have the same definition as California Health and Safety Code Section 11362.7 et seq, and as may be amended, and which defines "Primary Caregiver" as a individual, or "medical cannabis collective" designated by a qualified patient or by a person with an identification card, or a written recommendation, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

1. In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the California Health and Safety Code, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the California Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2 of the California Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2 of the California Health and Safety Code, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the California Health and Safety Code, the owner or operator, or no

more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

2. An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

3. An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

"Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 et seq, and as may be amended, and which states a person suffering from a serious medical condition who obtains a written recommendation from a physician licensed to practice medicine in the state of California to use marijuana for personal medical purposes.

"Serious medical condition" shall have the same definition as California Health and Safety Code Section 11362.7 et seq, and as may be amended, and which states all of the following medical conditions:

1. Acquired immune deficiency syndrome (AIDS);
2. Anorexia;
3. Arthritis;
4. Cachexia;
5. Cancer;
6. Chronic pain;
7. Glaucoma;
8. Migraine;
9. Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis;
10. Seizures, including, but not limited to, seizures associated with epilepsy;
11. Severe nausea;
12. Any other chronic or persistent medical symptom that either:

a. Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).

b. If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

"Written recommendation" shall have the same definition as California Health and Safety Code Section 11362.7 et seq, and as may be amended, and which states a "written recommendation" is an accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of California Health and Safety Code Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

(Ord. 12585 § 1 (part), 2004)

5.80.020 Permit required.

Except for hospitals, research facilities, or an entity authorized pursuant to OMC Section 8.46.030 and primary caregivers, as defined in Section 5.80.010 B (1), it is unlawful for any owner, operator, or association to own, conduct, operate or maintain, or to participate therein, or to cause or to permit to be conducted, operated, or maintained, any dispensary with four or more

"qualified patients" and caregivers with valid ID pursuant to California Health and Safety Code Section 11362.7 et seq., in the city of Oakland unless there exists a valid permit therefore, granted and existing in compliance with the provisions of Chapter 5.02. The City Manager and/or his/her designee shall issue no more than four valid permits for the operation of dispensaries in the city of Oakland. The application for such permit shall set forth, in addition to the requirements specified in Section 5.02.020, the fact that the proposed location of such dispensary is not within one thousand (1,000) feet, unless the City Manager or his/her designee in their discretion determines that the location will not impact the peace and order and welfare of the public, of a public or private school or a public library or youth center (serving youth eighteen (18) and under), or parks and recreation facilities or residential zone or another dispensary. The proposed location must be located in a commercial or industrial zone, or their equivalent as may be amended, of the city. Public notice shall be given as provided in Section 5.02.050, and the investigating official referred to in Section 5.02.030 to whom the application shall be referred, shall be the City Manager. In recommending the granting or denying of such permit and in granting or denying the same, the City Manager, shall give particular consideration to the capacity, capitalization, complaint history of the applicant and any other factors that in their discretion she/he deems necessary to the peace and order and welfare of the public. All Applicants shall pay an application fee and all inspections fees that may be required therewith.
(Ord. 12585 § 1 (part), 2004)

5.80.030 Regulations.

The dispensary shall meet all the operating criteria for the dispensing of medical marijuana as is required pursuant to California Health and Safety Code Section 11362.7 et seq. and by the Oakland City Manager or his/her designee's administrative regulations for the permitting and operation of medical marijuana dispensaries including security concerns. It is unlawful for any person or association operating a dispensary under the provisions of this chapter or any dispensary whatsoever, in the city, or any agent, employee or representative of such person to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct, or otherwise, or to permit such dispensary to remain open, or patrons to remain upon the premises, between the hours of eight p.m. and seven a.m. the next ensuing day.
(Ord. 12585 § 1 (part), 2004)

5.80.040 Performance standards.

Dispensaries, once permitted, shall meet the following operating standards for the duration of the use:

A. Dispensaries may possess no more than eight ounces of dried marijuana per qualified patient or caregiver, and maintain no more than six mature and twelve (12) immature marijuana plants per qualified patient.

1. If a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient' s medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs.

2. Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section.

B. The City Manager shall set forth in her/his administrative regulations the method and manner in which background checks of employees for dispensaries will be conducted, and which shall set forth standards for disqualification of an employee based on their criminal history.

C. No cannabis shall be smoked, ingested or otherwise consumed on the premises.

D. Dispensary shall not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages.
E. Dispensary shall maintain records of all patients and or patient caregivers using only the identification card number issued by the county, or its agent, pursuant to California Health and Safety Code Section 11362.7 et seq., as a protection of the confidentiality of the cardholders, or a copy of the written recommendation.
F. Dispensary shall allow the City Manager or his/her designee to have access to the entities' books, records, accounts, and any and all data relevant to its permitted activities for the purpose of conducting an audit or examination. Books, records, accounts, and any and all relevant data will be produced no later than twenty-four (24) hours after City Manager or his/her designees request.
G. The dispensary shall provide litter removal services twice each day of operation on and in front of the premises and, if necessary, on public sidewalks within hundred (100) feet of the premises.
H. The dispensary shall provide adequate security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft.
I. Signage for the establishment shall be limited to one wall sign not to exceed ten square feet in area, and one identifying sign not to exceed two square feet in area; such signs shall not be directly illuminated.
J. The dispensary shall provide City Manager or his/her designee, the chief of police and all neighbors located within fifty (50) feet of the establishment with the name, phone number and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the establishment. The dispensary shall make every good faith effort to encourage neighbors to call this person to try to solve operating problems, if any, before any calls or complaints are made to the police department or other city officials.
K. The dispensary shall meet any specific, additional operating procedures and measures as may be imposed as conditions of approval by the City Manager or his/her designee in order to insure that the operation of the dispensary is consistent with protection of the health, safety and welfare of the community, qualified patients and caregivers, and will not adversely affect surrounding uses.
(Ord. 12585 § 1 (part), 2004)

5.80.050 Regulatory fees.

Every person conducting, managing or maintaining the business of a dispensary in the city shall, in addition to the application fees, pay a regulatory fee annually in advance, and shall keep a copy of the business tax certificate issued by the Business Tax Office, together with a copy of the dispensary permit issued pursuant to the provisions of Section 5.12.020, together with a copy of this chapter, including the regulations set forth in Section 5.80.030, posted in a conspicuous place in the premises maintained as such dispensary at all times during which such dispensary is being operated.
(Ord. 12585 § 1 (part), 2004)

5.80.060 Compensation.

Dispensary shall receive only compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card, or written recommendation, to enable that person to use marijuana pursuant to California Health and Safety Code Section 11362.7 et seq, or for payment for out-of-pocket expenses incurred in providing those services, or both.

Retail sales of medical cannabis for excessive profits are explicitly prohibited.
(Ord. 12585 § 1 (part), 2004)

5.80.070 Appeals.

Notwithstanding Section 5.02.100, any decision, except for suspension and or revocation, pursuant to this chapter by the City Manager or his/her designee shall be final and conclusive, with no appeal to the City Council or any other appellate body. For suspensions and/or revocations an independent hearing officer shall make an initial determination with an appeal to the City Manager, in accordance with procedures in set forth in Section 5.02.100. The decision of the City Manager shall be final and conclusive.
(Ord. 12585 § 1 (part), 2004)

5.80.080 Prohibited operations.

All owners, operators, collaborative, associations, and collectives operating in violation of California Health and Safety Code Section 11326.7 et seq and 11366.5, and this chapter are expressly prohibited. Except for uses established pursuant to OMC Chapter 8.46, no use which purports to have distributed marijuana prior to the enactment of this chapter shall be deemed to have been a legally established use under the provisions of the Oakland Planning Code, the Oakland Municipal Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim legal nonconforming status.
(Ord. 12585 § 1 (part), 2004)

5.80.090 Liability.

To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this chapter shall not become a personal liability of any public officer or employee of the city of Oakland.
(Ord. 12585 § 1 (part), 2004)

City of Pleasanton
Chapter 6.18 MEDICAL MARIJUANA DISPENSARIES
6.18.010 Definitions.

As used in this chapter, the following terms shall be ascribed the following meanings:

A. "Medical marijuana" means marijuana in compliance with California Health and Safety Code Sections 11362.5 et seq.

B. "Medical marijuana dispensary" means any facility or location, whether fixed or mobile, where medical marijuana is made available to, distributed by, or distributed to one or more of the following: a qualified patient, a person with an identification card, or a primary caregiver, in accordance with California Health and Safety Code Section 11362.5 et seq., as amended.

A medical marijuana dispensary shall not include the following uses, so long as such uses comply with this code, California Health and Safety Code Section 11362.5 et seq., as amended, and other applicable law:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code, as amended;

2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code, as amended;

3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code, as amended;

4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code, as amended;

5. A hospice or a home health agency, licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code, as amended.

C. "Person with an identification card" shall have the meaning given that term by California Health and Safety Code Section 11362.7, as amended.

D. "Primary caregiver" shall have the meaning given that term by California Health and Safety Code Section 11362.7, as amended.

E. "Qualified patient" shall have the meaning given that term by California Health and Safety Code Section 11362.7, as amended. (Ord. 1955 § 1, 2007)

6.18.020 Operation of medical marijuana dispensaries prohibited.

No person shall operate or permit to be operated a medical marijuana dispensary in or upon any premises in the city. (Ord. 1955 § 1, 2007)

6.18.030 Penalty.

Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the provisions of this chapter shall be punished by a fine of not more than $1,000.00 or by imprisonment for a period not exceeding six months, or by both such fine and imprisonment. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter is committed, continued or permitted by such person and shall be punished accordingly. (Ord. 1955 § 1, 2007)

Alameda County

Chapter 6.108 MEDICAL MARIJUANA DISPENSARIES

Sections:

6.108.010 Purpose and intent.
6.108.020 Definitions.
6.108.030 Permit required.
6.108.040 Term of permits and renewals.
6.108.050 Application, renewal and revocation procedures.
6.108.060 Contents of application.
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6.108.010 Purpose and intent.

The purpose and intent of this chapter is to implement state law by providing a means for regulating the operation of medical marijuana dispensaries in a manner that is consistent with state law and which promotes the health, safety and general welfare of the residents and businesses within the unincorporated portions of the county.

(Ord. 2005-52 § 2 (part): Ord. 2005-25 § 2 (part))

6.108.020 Definitions.

The following words and phrases shall have the following meanings when used in this chapter:

A. "Applicant" means a person who shall seek a permit under this chapter by filing an application as provided for in this chapter. "Application" means that form provided by the sheriff in accordance with this chapter for the purpose of seeking a permit.

B. "County" means the county of Alameda. "State" means the state of California.

C. "Eligible application" means an application that complies with the requirements of the initial review and is submitted for final selection, as provided for in Section 6.108.110.

D. "Identification card" has the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended.

E. "Medical marijuana dispensary" or "dispensary" means any facility where medical marijuana is made available and/or distributed under the authority of California Compassionate Use Act and as regulated by this chapter; provided, however, that the following facilities are exempt from the requirement of a permit:

1. A clinic that is licensed under Chapter 1 of Division 2 of the California Health and Safety Code.
2. A health care facility that is licensed under Chapter 2 of Division 2 of the California Health and Safety Code.
3. A residential care facility for persons with chronic life-threatening illness that is licensed under Chapter 3.01 of Division 2 of the California Health and Safety Code.
4. A residential care facility for the elderly that is licensed under Chapter 3.2 of Division 2 of the California Health and Safety Code.
5. A residential hospice or a home health agency that is licensed under Chapter 8 of Division 2 of the California Health and Safety Code.

F. "Permit" means a permit issued by the county to a medical marijuana dispensary under this chapter. "Permittee" means a person who holds an effective and current permit under this chapter.

G. "Person" means any human being or an incorporated or unincorporated business entity or association established under the laws of the state.

H. "Person with an identification card" has the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended. Until such time as the state implements a program for issuance of identification cards under Section 11362.7 of the California Health and Safety Code throughout California, any identification card issued under the authority of the state or a local agency in California shall be deemed to comply with this section.

I. "Premises" means the building in which a medical marijuana dispensary is operated and, in addition, any accessory structures and appurtenant areas.

J. "Sheriff" means the sheriff of the county of Alameda and his or her authorized representatives.

K. "Primary caregiver" has the same definition as in Section 11362.5 of the California Health and Safety Code, as it may be amended.

L. "Qualified patient" has the same definition as in Section 11362.5 of the California Health and Safety Code, as it may be amended.

M. "School" means an institution of learning for minors, whether public or private, that offers a regular course of instruction and any child or day care facility.

(Ord. 2005-52 § 2 (part): Ord. 2005-25 § 2 (part))

6.108.030 Permit required.

A. It shall be unlawful for any person to conduct, engage in or allow to be conducted or engaged in the operation of a medical marijuana dispensary in the unincorporated portion of Alameda County, unless such medical marijuana dispensary has been granted a legally effective permit issued under this chapter. Notwithstanding the above, the permits issued under this chapter do not provide any protection or immunity for any person from state or federal laws, or from prosecution pursuant to any applicable state or federal laws.

B. The owner, managing partner, officer of a corporation or such other person who shall be primarily responsible for the operation of a proposed medical marijuana dispensary shall apply for a permit under this chapter and, if granted, shall maintain the operation of the medical marijuana dispensary in conformity with the terms of this chapter and of the permit.

C. The fact that an applicant possesses other types of state or county permits or licenses other than those identified in Section 6.108.020 shall not exempt the applicant from obtaining a permit under this chapter, nor shall the terms and conditions of any other such permit or license modify the requirements of a permit granted under this chapter.

D. At no time shall the county have in effect more than three permits, consisting of a maximum of one permit in each of the areas shown in Exhibit A at the end of this chapter. No permit shall be

issued in any portion of the unincorporated area that is not within one of the areas delineated in Exhibit A.
E. Notwithstanding subsection D of this section, each medical marijuana dispensary shall also meet all of the following locational standards:
1. No dispensary may be closer than one thousand (1,000) feet from any other dispensary.
2. No dispensary may be closer than one thousand (1,000) feet from any school, public park or playground, drug recovery facility or recreation center.
3. Each dispensary shall be located in a commercial or industrial zone or their equivalent.
F. The county has the ability to reduce the location requirement as it applies to schools by fifteen (15) percent upon a finding that the dispensary would not endanger the health and safety of students.
(Ord. 2005-52 § 2 (part): Ord. 2005-25 § 2 (part))

6.108.040 Term of permits and renewals.
A. Each permit shall expire two years after the date of its issuance. Any permit may be renewed by the sheriff for successive two-year periods upon the submission of an application by the permittee. At the time of consideration of a renewal application, the county shall consider compliance with conditions in the prior term and, in addition, the HCSA may review and revise the mission statement of the dispensary in accordance with the requirements of Sections 6.108.090 and 6.108.100.
B. Notwithstanding subsection A of this section, any permit shall expire upon the effective date of an ordinance that provides for the operation of a medical marijuana dispensary by the county, whether as a county facility or under contract with the county.
C. Any application for renewal shall be filed at least forty-five (45) days before expiration of the permit.
D. Any application for renewal shall be rejected if:
1. The application is filed less than forty-five (45) days before its expiration.
2. The permit is suspended or revoked at the time of the application; provided, however, that an application for renewal may be filed within ten days after the granting of a permittee's appeal of the suspension or revocation of a permit.
3. The dispensary authorized by the permit has not been in regular operation in the four months prior to the renewal application.
4. The dispensary fails to conform to the criteria set forth in Section 6.108.100.
(Ord. 2005-25 § 2 (part))

6.108.050 Application, renewal and revocation procedures.
A. The sheriff shall initiate an application process upon receipt of an application for the establishment of a dispensary within an area where a dispensary could be established based upon the provisions of subsection D of Section 6.108.030.
B. Each application for the establishment of a dispensary or renewal of an existing permit shall be filed with the sheriff and the sheriff shall be responsible for administering the application process as set forth in this chapter.
C. The board of supervisors shall, by resolution, adopt such forms and procedures as are necessary to implement this chapter with respect to the initial selection, future selection, renewal, revocation and suspension of permits.
D. Wherever this chapter requires the county to give notice to an applicant, appellant or permittee, such notice shall be given by the sheriff, in writing, and shall be delivered either by

personal delivery or by certified U.S. mail, postage prepaid, return receipt requested. In addition, any such notice shall be posted at the address of the dispensary on the date of the mailing of notice.
E. No person or facility that purports to have distributed marijuana prior to the enactment of this chapter shall be deemed to have been a legally established dispensary under the provisions of this chapter, and such person or facility shall not be entitled to claim a legal nonconforming status. Other than specifically provided in Section 6.108.080, no preference shall be given to any applicant due to an existing or prior operation of such a facility.
(Ord. 2005-25 § 2 (part))

6.108.060 Contents of application.
A. Each application shall set forth or incorporate by reference the following information in a standard form adopted by the board of supervisors:
1. Address of the proposed dispensary and the name and address of the owner of the premises.
2. The full name, date of birth, social security number, present address and telephone number of the applicant.
3. The address to which notice of action on the application is to be mailed.
4. All residential addresses of the applicant for the five years immediately prior to the date of the application.
5. Written proof that the applicant is eighteen (18) years of age or older (i.e., California driver's license, California identification card or birth certificate).
6. The height and weight and the color of eyes and hair of the applicant.
7. Photographs of the applicant for identification purposes to be taken by the sheriff.
8. The names and addresses of all businesses operated by and the employment of the applicant for the five years immediately prior to the date of the application.
9. The address of any dispensaries that had previously been operated by the applicant and a statement of whether the authorization for any such operation had been revoked or suspended and, if so, the reason therefor.
10. The names and telephone numbers of the person or persons to be regularly engaged in the operation of the proposed dispensary, whether an employee, volunteer or contractor. The application shall also identify those persons, including telephone numbers (i.e., emergency contact), having management and supervisory responsibilities for the proposed dispensary. Every person listed as owner, manager, supervisor or employee must submit fingerprints and other necessary information for a background check to the Alameda County sheriff's office, and be photographed for identification purposes. In addition, any new employees, independent contractors, other persons and/or volunteers who will work at the proposed medical marijuana dispensary must submit their information to the sheriff's office within five days prior to their employment.
11. A description of the proposed security arrangements for insuring the safety of persons and protection of the premises from theft.
12. A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the dispensary. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus twelve (12) inches.
13. A description of external appearance of the dispensary, including a precise depiction of any signage.
14. A description of products to be sold or dispensed by the dispensary.
15. The mission statement of the dispensary with respect to meeting the medical needs of patients in its area, as delineated by subsection D of Section 6.108.030.

16. A description of the methods by which the applicant will mitigate any potentially adverse impacts, such as loitering or noise, on surrounding property owners.
17. Authorization for the county, its agents and employees to seek verification of the information contained in the application.
18. Written certification that the applicant has reviewed and understands and accepts the standard conditions that are set forth in Section 6.108.120.
19. Certification, under penalty of perjury, that all the information contained in the application is true and correct.
20. A statement by the applicant that it has the ability to comply with all laws regulating businesses in the state of California and that it shall maintain compliance during the term of the permit.
B. The filing of an application shall be deemed complete upon the submission of an application in conformance with this section and payment of the application fees required by Section 6.108.070.
C. An application may be reviewed and copied by any member of the public in accordance with the California Public Records Act.
(Ord. 2005-52 § 2 (part): Ord. 2005-25 § 2 (part))

6.108.070 Fees.
A. Every application or renewal of a permit shall be accompanied by a nonrefundable fee, as established by the board of supervisors, in order to reimburse the county for the cost of reviewing and acting upon the application.
B. In addition, each dispensary shall pay an annual fee, as established by the board of supervisors, for the administration of the permit, including monitoring and enforcing compliance with terms of the permit.
C. The board of supervisors may enact such other fees as may be necessary to recover the county's costs of inspection and corrective actions in relation to dispensaries.
D. The board of supervisors may enact fees to be paid to schools located in the three areas where dispensaries are permitted for reimbursement for drug and alcohol treatment and education for students.
(Ord. 2005-25 § 2 (part))

6.108.080 Selection of permittees.
A. Each of the medical marijuana dispensaries that is identified in Exhibit B at the end of this chapter shall be allowed to file an application not later than one hundred twenty-five (125) days after the effective date of this chapter. At the time of filing such application the applicant is to provide notice of such application to all neighboring business and/or residences within one thousand (1,000) feet of the proposed dispensary. All such applications shall be acted upon in accordance with the procedures set forth in this chapter. No other application may be considered until all of the medical marijuana dispensaries listed in Exhibit B have either been issued or denied a permit or have otherwise failed to qualify for a permit.
B. For each dispensary that is identified in Exhibit B, no finding shall be made that the dispensary is in violation of this chapter until the earliest of any of the following dates:
1. Upon one hundred twenty-five (125) days following the effective date of this chapter, no application has been filed for the operation of the dispensary.
2. Upon failure to submit an application by an existing dispensary or denial of an application that was timely filed for operation of the dispensary and rejection of all appeals of the denial by the applicant.
3. Issuance of an order of suspension or revocation by the county under Section 6.108.160.

4. Upon the effective date of an ordinance that provides for the operation of a medical marijuana dispensary by the county, whether as a county facility or under contract with the county.
C. After conclusion of all actions on all applications filed under subsection A of this section, the sheriff shall accept applications and conduct a selection process in accordance with Section 6.108.030.
(Ord. 2005-52 § 2 (part): Ord. 2005-25 § 2 (part))

6.108.090 Initial review of application.
A. The sheriff shall commence review of any application immediately upon its filing and shall complete such review within thirty (30) days. In conducting this review, the following county agencies shall comment on specific portions of the application:
1. The sheriff shall be responsible for verifying factual information in the application, including names, addresses and other information on the applicant operator and its employees of the proposed dispensary.
2. The sheriff shall comment upon the adequacy of security measures that are described in the application.
3. The community development agency shall comment upon the proposed location's compliance with the requirements of subsections D and E of Section 6.108.030 and conditions that are needed to mitigate adverse impacts on surrounding uses.
4. The health care services agency shall comment upon the services to be provided and the mission statement set forth in the application.
B. Within ten business days after the filing of an application, the sheriff shall reject any application and so notify the applicant, if the application has been improperly completed or if it is incomplete. The applicant may amend and refile the application within ten days after such rejection.
C. At the conclusion of the initial review, the sheriff shall notify the applicant of the results of the initial review of the application.
(Ord. 2005-25 § 2 (part))

6.108.100 Action upon completion of initial review.
A. Upon completion of the initial review, the sheriff shall reject any permit that meets any of the following criteria:
1. The proposed dispensary does not comply with requirements of this chapter.
2. The applicant has knowingly made a false statement of material fact or has knowingly omitted a material fact from the application.
3. The operation of the proposed dispensary at the proposed location is prohibited by any state or local law or regulation.
4. Any person who is listed on the application pursuant to subsection (A)(10) of Section 6.108.060 has been convicted of a felony within the past ten years. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
5. The applicant or the operator listed in the application is less than eighteen (18) years of age.
6. The health care services agency has determined that the application has failed to state a health care purpose that fulfills the purposes of Section 11362.5 et seq. of the California Health and Safety Code.
B. Any application that is not rejected upon completion of the initial review shall be deemed an eligible application and submitted to the final selection process.
(Ord. 2005-25 § 2 (part))

6.108.110 Final selection of medical marijuana dispensaries.
A. The final selection process shall be comprised of selection of which eligible applications shall be submitted for final selection and the establishment of operating conditions of any permits issued under this chapter. The final selection process shall not exceed thirty (30) days in the absence of an appeal.
B. The final selection process shall commence with the separation of all eligible applications into the areas that are delineated in subsection D of Section 6.108.030. If an area has a number of eligible applications that is the same as or less than the allowable number of medical marijuana dispensaries for such area, then all applications for that area shall be submitted for establishment of operating conditions as set forth in subsection C of this section. If any area has a number of eligible applications that exceeds the maximum number of dispensaries for such area, the eligible applications to be submitted for final selection shall be designated by drawing or other method that ensures that each eligible application has an equal chance of being selected for the area.
C. The sheriff, the community development agency and the health care services agency shall establish operating conditions, in addition to the standard conditions contained in Section 6.108.120, for each eligible application that has been submitted for final review. The operating conditions shall be limited to those that are necessary to carry out the purposes of this chapter, to mitigate specific and foreseeable adverse impacts on properties in the vicinity and to achieve the mission statement in the application.
D. At the conclusion of the final selection, the sheriff shall give notice to the applicant of the operating conditions that would attach to the permit. Within ten days after notice, the applicant shall either:
1. Certify acceptance of the operating conditions and the standard conditions of the permit, and the permit shall thereupon issue immediately.
2. If the applicant refuses or fails to certify agreement with any operating condition or standard condition, the application shall be denied. The applicant may appeal any condition within ten days after notice of the conditions. Upon either the failure to file a timely appeal or the rejection of the appeal, the application shall be deemed denied.
(Ord. 2005-25 § 2 (part))

6.108.120 Standard conditions.
A. Throughout the term of the permit, each permittee shall not violate this chapter and shall comply with the following standard conditions:
1. It shall be a violation of this chapter for a dispensary to distribute, provide or allow to be provided marijuana to any person except those persons who are primary caregivers or qualified patients who are in possession of an identification card which is in compliance with the regulations established by the California Department of Health or health care services agency. All distribution that does not strictly comply with Section 11362.5 of the California Health and Safety Code and the terms of the permit and this chapter is prohibited. It shall be the responsibility of the permittee to ensure that a good faith effort be made to verify the validity of any identification card provided to the dispensary.
2. Each dispensary shall maintain records of persons who have received marijuana from the dispensary. These records shall set forth only the identification card number issued pursuant to California Health and Safety Code Section 11362.71 et seq., as a protection of the confidentiality of the cardholders or a copy of such documentation that authorizes such distribution under this chapter.

3. No dispensary shall be open for business between the hours of 12:00 a.m. and 9:00 a.m. or between the hours of 9:00 p.m. and 11:59 p.m. on any day. Additionally, to avoid conflict with the travel of students to and from the school, no dispensary located within one thousand (1,000) feet of any school shall be open during the one and one-half hour period immediately following the cessation of classes. No activities that are undertaken in the operation of the dispensary shall be conducted outside the interior premises of the dispensary.
4. Marijuana may not be grown or cultivated on the premises. It shall be a violation of this chapter if at any time the amount of marijuana on the premises exceeds the lesser of:
a. An amount of marijuana equal to eight ounces per qualified patient, primary caregiver and person with an identification card who has received marijuana from the dispensary during the previous thirty (30) calendar days, or
b. A total of twenty (20) pounds of marijuana.
5. No marijuana shall be smoked, ingested or otherwise consumed on the premises of a dispensary, provided that ingestion by a vaporization device may be authorized in writing by the health care services agency.
6. A dispensary shall label its products by stating the name of the dispensary and the weight of cannabis. Any food products must be contained in a package that is labeled to indicate the ingredients, including the amount of cannabis contained in the package, and such other information as may be required by state or local law.
7. No person who is less than eighteen (18) years of age may be employed or otherwise engaged in the operation of the dispensary. No person under the age of eighteen (18) shall be allowed on the premises.
8. The entrance to a dispensary shall be posted with a notice that states the restrictions on the presence of persons under the age of eighteen (18) and that smoking, ingesting or consuming marijuana on the premises is prohibited. In addition, each dispensary shall conspicuously display the permit.
9. No dispensary may hold a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, nor may it include a business that sells alcoholic beverages. No alcohol may be stored, sold, dispensed or used on the premises.
10. Each permittee shall maintain a current registry of persons, including, but not limited to, employees, contractors and volunteers, who are engaged in the operation of the dispensary. The registry shall be provided to the sheriff at any time upon request. The registry shall include the name, current residential address, telephone number, date of birth and the height, weight and color of eyes and hair of each such person.
11. No person who has been convicted of a felony within the past ten years may be actively engaged in the operation of any dispensary. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
12. A dispensary shall provide adequate security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft.
13. The permittee shall provide the sheriff with the name, telephone number and facsimile number of a community relations contact to whom one can provide notice of problems associated with the dispensary. The permittee shall make a good faith effort to resolve problems without the need for intervention by the county.
14. A dispensary shall provide litter removal services twice each day of operation on and in front of the premises and, if necessary, on public sidewalks within one hundred (100) feet of the premises.
15. A dispensary shall comply with county building, zoning and health codes, and shall allow inspections to ensure conformance with such regulations.

16. A dispensary shall not be delinquent in the payment of fees required by this chapter.
17. All activities of the dispensary must take place within the interior of the building and not be visible from the street. A dispensary may not cover or alter the windows or building doors to comply with this requirement.
18. A dispensary must have appropriate restroom facilities that will accommodate both male and female customers.
B. In order to minimize any adverse impacts on surrounding properties or residents, the standard operating conditions that are set forth in this section may be modified upon the issuance of the permit or upon ten days' notice during the term of the permit.
C. During the term of each permit, the county shall require the permittee to comply with the standard operating conditions that are set forth in this section or as they may be modified in accordance with subsection B of this section and, in addition, any such operating conditions that may be established pursuant to subsections C and D of Section 6.108.110.
D. At any time during the operation of a dispensary and without notice, the sheriff, acting in conjunction with other appropriate county officials, may enter the premises for the purpose of observing compliance of the dispensary with the conditions of its permit.
(Ord. 2005-52 § 2 (part): Ord. 2005-25 § 2 (part))

6.108.130 Appeal from administrative determinations.
A. An appeal may be filed by an applicant, permittee or the owner or occupant of property within one thousand (1,000) feet of any existing or proposed dispensary.
B. Any appellant may appeal an administrative determination that is made in relation to any of the following actions:
1. Finding that an application is incomplete;
2. Determination that an application does not comply with the requirements of Section 6.108.100;
3. Establishment or modification of operating conditions;
4. Denial of permit; or
5. Suspension or revocation of a permit.
C. Any appeal shall be filed with the sheriff within ten days after the date of the notice of any such administrative determination.
D. Within ten days after the filing of an appeal, notice shall be given in accordance with Section 6.108.050. Such notice shall set forth the grounds for the appeal, the method of submitting comments to the county regarding the appeal and the date and location of the hearing of the appeal.
E. Any appeal that is not timely filed will be deemed ineffective and the administrative determination that is being appealed will become final.
(Ord. 2005-25 § 2 (part))

6.108.140 Administrative review of appeal.
A. Within thirty (30) days after the filing of an appeal of an administrative determination, the sheriff shall convene a panel consisting of a representative of the county administrator, community development agency, health care services agency and the sheriff at which the appeal shall be heard in public session. The appellant and any interested parties will be allowed to address the panel regarding the appeal.
B. Within ten days after conclusion of the hearing of the appeal by the administrative panel, the sheriff shall give notice of the decision of the panel.
C. Any appellant may file an appeal of the determination of the administrative panel within ten days after the date of the notice of the decision of the administrative panel.
(Ord. 2005-25 § 2 (part))

6.108.150 Hearing by the board of supervisors.
A. Within thirty (30) days after the filing of an appeal of the administrative panel's decision, the board of supervisors shall conduct a hearing of the appeal.
B. At least ten days prior to the hearing of the appeal by the board of supervisors, notice shall be given in accordance with Section 6.108.050. Such notice shall set forth the grounds for the appeal, the method of submitting comments to the county regarding the appeal and the date and location of the hearing of the appeal by the board of supervisors. The board of supervisors may give such additional notice of hearing as it deems appropriate in a particular case.
C. The board of supervisors may take any appropriate action upon the original administrative action that was appealed pursuant to Section 6.108.130, including granting or denying the appeal or imposing, deleting or modifying operating conditions of the permit. The decision of the board of supervisors shall be final.
(Ord. 2005-25 § 2 (part))

6.108.160 Suspension and revocation.
A. The sheriff may initiate the revocation or suspension of a permit when it shall appear that the permittee has committed any of the following actions:
1. Violates the operating or standard conditions of the permit or the requirements of state or local laws.
2. Fails to take reasonable measures to control disturbances, loitering or such other problems on the premises.
B. No permit shall be revoked or suspended by virtue of this section until a hearing has been held in the same manner as described in Sections 6.108.140 and 6.108.150. Notice of the hearing shall contain a brief statement of the grounds for revoking or suspending the permit and the time and date for the hearing.
C. The decision of the administrative panel may include suspension, revocation or the modification of the permit by adding conditions that are designed to reduce or remove the problems that caused the proposed revocation or suspension of the permit.
D. Within ten days after conclusion of the hearing of the appeal by the administrative panel, the sheriff shall give notice of the decision of the panel.
E. Any appellant may appeal the determination of the administrative panel to the board of supervisors within ten days after the date of the notice of the decision of the administrative panel. The board of supervisors shall act upon the appeal in accordance with Section 6.108.150.
(Ord. 2005-25 § 2 (part))

6.108.170 Transfer of the permit.
A. No permittee may transfer a permit without authorization by the county, granted in accordance with this section.
B. A permittee shall apply for transfer by submitting an application that complies with Section 6.108.060. The sheriff shall verify information in the application and shall approve the transfer unless it fails to comply with the standards set forth in Section 6.108.100.
C. Before a transfer of a permit may become effective, the transferee shall certify acceptance of the operating conditions and the standard conditions of the permit.
(Ord. 2005-25 § 2 (part))

6.108.180 Prohibited operations.

The permittee and or his or her agents shall at all times comply with Section 11326.5 et seq. of the California Health and Safety Code and this chapter in the operation of the dispensary. This includes, but is not limited to, the prohibition of sales, transportation and delivery of medicinal marijuana off the site of the dispensary premises.
(Ord. 2005-25 § 2 (part))

6.108.190 Misdemeanor violation.
Any person violating any of the provisions or failing to comply with Section 6.108.120(A)(2)--(7) or (9) of this chapter shall be guilty of a misdemeanor. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter or the permit is committed, continued or allowed in conjunction with the operation of a dispensary and shall be punishable accordingly.
(Ord. 2005-25 § 2 (part))

6.108.200 Civil injunction.
In addition to the penalties provided in this chapter, any condition caused or allowed to exist in violation of any of the provisions of this chapter shall be deemed a public nuisance and shall, at the discretion of county, create a cause of action for injunctive relief.
(Ord. 2005-25 § 2 (part))

6.108.210 Severability.
The provisions of this chapter are hereby declared to be severable. If any provision, clause, word, sentence or paragraph of this chapter or the application thereof to any person, establishment or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter.
(Ord. 2005-25 § 2 (part))

6.108.220 Judicial review.
Judicial review of a final decision made under this chapter may be had by filing a petition for a writ of mandate with the Superior Court in accordance with the provisions of Section 1094.5 of the California Code of Civil Procedure. Any such petition or any other action seeking judicial review shall be filed within ninety (90) days after the day the decision becomes final.
(Ord. 2005-25 § 2 (part))

6.108.230 Six-month review.
The board of supervisors will conduct a formal review of the ordinance codified in this chapter within six months after its effective date.
(Ord. 2005-25 § 2 (part))

Existing Medical Marijuana Dispensaries

1. The Health Center (THC), 15998 E. 14th Street, San Leandro, California
2. Alameda County Resource Center (ACRC), 16250 E. 14th Street, Suite B, San Leandro, California
3. We Are Hemp, 913 E. Lewelling Boulevard, Hayward, California
4. Compassionate Caregivers, 16045 E. 14th Street, San Leandro, California
5. A Natural Source, 16360 Foothill Blvd., San Leandro, California
6. Compassionate Collective of Alameda County (CCAC), 21222 Mission Boulevard, Hayward, California
7. Garden of Eden, 21227 Foothill Boulevard, Hayward, California

San Leandro

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO ORDINANCE NO. 2004-024 (1005/1098/1413/2792) AN INTERIM URGENCY ORDINANCE PROHIBITING CONSIDERATION AND APPROVAL OF USE PERMITS, VARIANCES, BUILDING PERMITS, START OF NEW CONSTRUCTION, OR OTHER ENTITLEMENTS FOR ANY NEW MEDICAL MARIJUANA DISPENSARIES WITHIN THE CITY FOR AFORTY-FIVE DAY PERIOD THE CITY COUNCIL OF THE CITY OF SAN LEANDRO DOES ORDAIN AS FOLLOWS:

Section 1. Findings

A. In 1996 the voters of the state of California approved Proposition 215, codified as Health and Safety Code Section 11362.5 et. sec .. and entitled "The Compassionate Use Act of 1996".

B. The intent of Proposition 215 was to enable persons who are in need of medical marijuana for specified medical purposes to obtain medical marijuana, and use it under limited, specified circumstances.

C. The Legislature enacted SB 420 to clarify the scope of the Compassionate Use Act of 1996, and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420.

D. The San Leandro Municipal Code and Zoning Code are silent with regard to the regulation and location of medical marijuana dispensaries.

E. The City of San Leandro has recently received inquiries regarding the permitting and establishment of medical marijuana dispensaries within the City due, in part, to restrictions that other surrounding agencies have placed on the ability of such uses to locate within those agencies' jurisdictions.

F. In order to address both community and statewide concerns regarding the establishment of medical marijuana dispensaries, it is necessary for the City of San Leandro to study the potential impact such facilities may have on the public health, safety, and welfare.

G. The City Council finds that it is necessary to study the possible adoption of amendments to the City's Zoning Code in order to adopt legislation that conforms with the recently enacted SB 420 as well as recent state and federal case law.

H. Based on the foregoing, the City Council finds that issuing permits, business licenses, or other applicable approvals allowing for the establishment and operation of medical marijuana dispensaries, prior to the completion of the City's study of the potential impact of such facilities, poses a current and immediate threat to the public health, safety, and welfare, and that therefore a temporary moratorium on the issuance of such permits, licenses, and other approvals is necessary.

I. The Community Development Director, in conjunction with the City Manager, the City Attorney, and the Chief of Police will immediately begin a study of the potential impacts of

medical marijuana dispensaries, and possible amendments to the City's Zoning Code related to this use.

Section 2. Imposition of Moratorium
A. From and after the date the City Council adopts this interim urgency ordinance, no use permit, variance, building permit, or any other applicable approval for use, including, but not limited to, the issuance of a business license, maybe approved or issued for the establishment or operation of a medical marijuana dispensary for a period of 45 days.

B. For purposes of this ordinance, "medical marijuana dispensary means any facility or location where a primary caregiver intends to make available, sell, transmit, give, or otherwise provide medical marijuana to two or more of the following: a qualified patient or a person with an identification card, or another primary caregiver in strict accordance with Health and Safety Code Section 11362.5 et sec . The definitions "primary caregiver", "qualified patient", and "person with an identification card" are as defined in Health and Safety Code Section 11362.5 et seg.

C. For purposes of this ordinance, a "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health & Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health & Safety Code, a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health & Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of the Health & Safety Code, as long as any such use complies strictly with all applicable laws.

D. This ordinance is an interim ordinance adopted as an urgency measure, and is for the immediate preservation of the public safety, health, and welfare. The facts constituting the urgency are: California cities that have permitted the establishment of medical marijuana dispensaries have recognized that doing so has resulted in negative secondary effects such as an increase in crime, including burglary, robbery, and the sale of illegal drugs in the areas immediately surrounding medical marijuana dispensaries. The City of San Leandro has recently received inquiries regarding the permitting and establishment of medical marijuana dispensaries within the City. The City of San Leandro does not currently have standards in the San Leandro Zoning Code related to the location, operation, and concentration of medical marijuana

 dispensaries within the City.
Absent the adoption of this urgency ordinance, the establishment and operation of medical marijuana dispensaries in the City would result in the harmful secondary effects identified above. As a result of the harmful secondary effects associated with medical marijuana dispensaries, and the current and immediate threat such secondary effects pose to the public health, safety, and welfare, it is necessary to establish a 45-day moratorium on the establishment and operation of new medical marijuana dispensaries in the City pending the completion of the City's study of the potential impacts of medical marijuana dispensaries, and possible amendments to the City's Zoning Code.

Section 3. Compliance with California Environmental Quality Act

The City Council finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because it has no potential for resulting in physical change to the environment, directly or indirectly; it prevents changes in the environment pending the completion of the contemplated Zoning Code review.

Section 4. Severability
If any provision of this ordinance or the application thereof to any person ar circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 5. Effective Date
This ordinance shall become effective immediately upon adoption if adopted by at least four- fifths vote of the City Council and shall be in effect for forty-five days from the date of adoption unless extended by the City Council as provided for in the Government Code.

ORDINANCE NO. 2004-024 3

Introduced by Councilmember Grant on this 6th day of December, 2004, passed and adopted by the following called vote:

Members of the Council:
AYES: Councilmembers Badger, Glaze, Grant, Nardine, Santos, Stephens; Mayor Young(7)
NOES: None (0)
ABSENT: None
ATTEST:
Marian Handa, City Clerk

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO ORDINANCE NO. 2005-001 (1005/1098/1413/2792) AN INTERIM URGENCY ORDINANCE OF THE CITY OF SAN LEANDRO MAHING FINDINGS AND EXTENDING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES PENDING THE REVIEW AND POSSIBLE AMENDMENT OF ZONING REGULATIONS APPLICABLE TO MEDICAL MARIJUANA DISPENSARIES THE CITY COUNCIL OF THE CITY OF SAN LEANDRO DOES ORDAIN AS FOLLOWS:

Section 1. Findings

A. In 1996 the voters of the state of California approved Proposition 215, codified as Health and Safety Code Section 11362.5 et. sec .. and entitled "The Compassionate Use Act of 1996".

B. The intent of Proposition 215 was to enable persons who are in need of medical marijuana for specified medical purposes to obtain medical marijuana, and use it under limited, specified circumstances.

C. The Legislature enacted SB 420 to clarify the scope of the Compassionate Use Act of 1996, and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420.

D. The San Leandro Municipal Code and Zoning Code are silent with regard to the regulation and location of medical marijuana dispensaries.

E. The City of San Leandro has recently received inquiries regarding the permitting and establishment of medical marijuana dispensaries within the City due, in part, to restrictions that other surrounding agencies have placed on the ability of such uses to locate within those agencies' jurisdictions.

F. In order to address both community and statewide concerns regarding the establishment of medical marijuana dispensaries, it is necessary for the City of San Leandro to study the potential impact such facilities may have on the public health, safety, and welfare.

G. The City Council finds that it is necessary to study the possible adoption of amendments to the City's Zoning Code in order to adopt legislation that conforms with the recently enacted SB 420 as well as recent state and federal case law.

H. Based on the foregoing, the City Council finds that issuing permits, business licenses, or other applicable approvals allowing for the establishment and operation of medical marijuana dispensaries, prior to the completion of the City's study of the potential impact of such facilities, poses a current and immediate threat to the public health, safety, and welfare, and that therefore a temporary moratorium on the issuance of such permits, licenses, and other approvals is necessary.

I. The City Council adopted a 45-day moratorium on medical marijuana dispensaries oil December 6, 2004, and this urgency ordinance will extend that moratorium for a 1-year period.

Section 2. Imposition of Moratorium

A. From and after the date the City Council adopts this interim urgency ordinance, no use permit, variance, building permit, or any other applicable approval for use, including, but not limited to, the issuance of a business license, maybe approved ar issued for the establishment or operation of a medical marijuana dispensary for a period of 1 year.
B. For purposes of this ordinance, "medical marijuana dispensary" means any facility or location where a primary caregiver intends to make available, sell, transmit, give, or otherwise provide medical marijuana to two or more of the following: a qualified patient or a person with an identification card, or another primary caregiver in strict accordance with Health and Safety Code Section 11362.5 et sec . The definitions "primary caregiver", "qualified patient", and "person with an identification card" are as defined in Health and Safety Code Section 11362.5 et seg.
C. For purposes of this ordinance, a "medical marijuana dispensary shall not include the following uses, as long as the location of such uses are otherwise regulated by applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health & Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health & Safety Code, a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of
the Health & Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of the Health & Safety Code, as long as any such use complies strictly with all applicable laws.
D. This ordinance is an interim ordinance adopted as an urgency measure, and is for the immediate preservation of the public safety, health, and welfare. The facts constituting the urgency are: California cities that have permitted the establishment of medical marijuana dispensaries have recognized that doing so has resulted in negative secondary effects such as an increase in crime, including burglary, robbery, and the sale of illegal drugs in the areas immediately surrounding medical marijuana dispensaries. The City of San Leandro has recently received inquiries regarding the permitting and establishment of medical marijuana dispensaries within the City. The City of San Leandro does not currently have standards in the San Leandro Zoning Code related to the location,
operation, and concentration of medical marijuana dispensaries within the City. Absent the adoption of this urgency ordinance, the establishment and operation of medical marijuana dispensaries in the City would result in the harmful secondary effects identified above. As a result of the harmful secondary effects associated with medical marijuana dispensaries, and the current and immediate threat such secondary effects pose to the public health, safety, and welfare, it is necessary to establish a 1-year moratorium on the establishment and operation of new medical marijuana dispensaries in the City pending the completion of the City's study of the potential impacts of medical marijuana dispensaries, and possible amendments to the City's Zoning Code.
E. The Community Development Director, in conjunction with the City Manager, the City Attorney, and the Chief of Police will immediately begin a study of the potential impacts of medical marijuana dispensaries, and possible amendments to the City's Zoning Code related to this use

Section 3. Compliance with California Environmental Quality Act

The City Council finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of
Regulations) because it has no potential for resulting in physical change to the environment, directly or indirectly; it prevents changes in the environment pending the completion of the contemplated Zoning Code review.

Section 4. Severability

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof
irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 5. Effective Date

This ordinance shall become effective immediately upon adoption if adopted by at least four-fifths vote of the City Council and shall be in effect for 1 year from the date of adoption unless extended by the City Council as provided for in the Government Code.

Introduced by Councilmember Santos on this 18th day of January, 2005, passed and adopted by the following called vote:

Members of the Council:
AYES: Councilmembers Badger, Glaze, Grant, Santos (4)
NOES: None (0)
ABSENT: Councilmembers Nardine, Stephens; Mayor Young (3)

Status of Medical Marijuana Ordinances in Contra Costa and Alameda Counties

Jurisdictions with MMD Ordinances	**Jurisdictions without MMD Ordinances**	**Code Standards**		
		Prohibited	Allowed with Use Permit	Allowed by Right
Contra Costa County				
	Antioch			
Brentwood		X		
	Clayton			
Concord		X		
	Danville			
El Cerrito		X		
Hercules		X*		
	Lafayette			
Martinez			X	
	Moraga			
Oakley		X		
	Orinda			
Pinole				X
	Pittsburg			
Pleasant Hill		X		
	Richmond			
San Pablo		X		
	San Ramon			
	Walnut Creek			
Contra Costa County		X		
10	**9**	**8**	**1**	**1**
Alameda County				
Albany			X	
Berkeley			X	
Dublin		X		
Emeryville		X		
Fremont		X		
	Hayward			
Livermore		X		
	Newark			
Oakland			X	
	Piedmont			
Pleasanton		X		
San Leandro		X*		
	Union City			
Alameda County			X	
10	**4**	**6**	**4**	**0**

* Moratorium in effect